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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 875

JOHN B. DES ROSIERS,

Petitioner,

vs.

FORD MOTOR COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT AND BRIEF IN SUPPORT OF PETITION.

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THOMAS A. JENCKES,
Of Counsel.

INDEX

	Page
Petition for writ of certiorari	1
Summary and short statement	2
Questions involved	5
Reasons relied on for allowance of the writ	6
Prayer	10
Brief in support of petition for writ of certiorari	11
The opinions of the courts below	11
Jurisdiction	11
Statement of the case	12
Specification of errors	15
Summary of argument	15
Argument	16
Point I. Departure from accepted legal proceedings.	16
Points II. Clear error apparent on face of opinion.	17
Point III. Decision in conflict with previous decisions of the supereme court and of the first circuit	23
Point IV. Apparent conflict of decisions	27
Point V. No further conflict possible	28
Conclusion	29
Appendix	30

Authorities Cited

Adamson v. *Gilliland*, 242 U. S. 350	8,23
Altoona Publix Theatres, Inc. v. *American Tri-Ergon Corp.*, 294 U. S. 477	10,12
Atlantic Gulf & Paper Co. v. *Wood*, 288 Fed. 148	25
Barbed Wire Case, 143 U. S. 275	8,23
Bragg-Kliesrath Corp. v. *Walter S. Vogel & Co., Inc.*, 67 Fed. (2d) 521	26
Deering v. *Winona Harvester Works*, 155 U. S. 300	8,23
DeForest Radio Co. v. *General Electric Co.*, 283 U. S. 664	8,11
Diamond Rubber Co. v. *Consolidated Power Co.*, 220 U. S. 428	8,24

Page

In re Dodge, 74 Fed. (2d) 756 9,27
Eames v. *Andrews*, 122 U. S. 40 8,25
Eibel Co. v. *Paper Co.*, 261 U. S. 60 8
E. H. Ferree Co. v. *United Shoe Machinery Co.*, 290 U. S. 614 and 708 7,11,17
Krementz v. *Cottle Co.*, 148 U. S. 562 9,26
Mackay Radio & Telegraph Co. v. *Radio Corp. of America*, 40 U. S. P. Q. 199 10,12
Magnum Import Co. v. *Coty*, 262 U. S. 159 7,11,17
Malignani v. *Jasper Marsh Co.*, 180 Fed. 442 6,26
McCormick v. *Burnat*, 283 U. S. 784 8,11
Miller v. *Standard Nut Margarine Co. of Florida*, 284 U. S. 498 8,11
Mossberg v. *Nutter*, 135 Fed. 95 9,26
Paramount Publix Corp. v. *American Tri-Ergon Corp.*, 294 U. S. 464 10,12
Permutit Co. v. *Wadham*, 13 Fed. (2d) 454 25
Radio Corp. of America v. *Raytheon Mfg. Co.*, 296 U. S. 459 8,11
Sanitary Refrigerator Co. v. *Winters*, 280 U. S. 30 ..... 10'12
Seymour v. *Osborne*, 78 U. S. 516 8,25
Sun Ray Corp. v. *Bellows-Claude Neon Co.*, 49 Fed. (2d) 886 9,26
Supreme Court Rule 38, Par. 5 (b) 1,8,28
Topliff v. *Topliff*, 145 U. S. 156 9,26
Victor Talking Machine Co. v. *John Wanamaker*, 275 Fed. 452 25
Webster Loom Co. v. *Higgins*, 105 U. S. 580 8,24

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JOHN B. DES ROSIERS,

Petitioner,

vs.

FORD MOTOR COMPANY.

PETITION FOR WRIT OF CERTIORARI

To the Honorable the Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Your petitioner, John B. Des Rosiers, respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the First Circuit to review the judgment of that Court entered on July 20, 1944.

A transcript of the record in the case, including the proceedings in said Circuit Court of Appeals, is furnished herewith in accordance with Rule 38 of the Rules of this Court.

Summary and Short Statement

The petitioner is the patent owner who, after having filed his application for patent and before issue, submitted

his invention to the Ford Motor Company, respondent herein. After rejecting his ideas and experimenting with various other types of four wheel mechanical brakes, the respondent deliberately adopted and used from 1932 to 1938 on its V-8 model a brake system embodying petitioner's invention, with utter disregard of petitioner's rights.

The question here is not one of patent monopoly, since the patent in issue expired in 1942, but had this gigantic respondent paid the struggling inventor a reasonable compensation for the appropriation of his invention, it is estimated the same would have approximated several millions of dollars.

The patentability of Claim 29 of petitioner's Reissue Patent *No. 20,086, dated September 1, 1936, over a questionable diagrammatic drawing in a printed publication is the primary issue involved herein. The subject matter of this claim in issue involves a four wheel mechanical brake system for automobiles, conceived when such brake structures for automobiles were in their infancy. The petitioner was the first to realize that if equal pressure were at all times applied through a common actuator (a new mode of operation), regardless of the angle of swivelling of the front wheels, all of the brakes would be worn equally and evenly (a new and beneficial result). The structure defined by this claim in issue provides brakes on all four wheels of the vehicle *all* of which are equally and simultaneously applied either upon application of a foot pedal *or* a hand lever, or both, through the medium of a *single controller shaft*, connected to both said foot pedal and hand lever.

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* By stipulation (R. p. 183) copies of the patent in suit and reference patents and publications were omitted from the printed transcript but form part of the record as physical exhibits. Therefore, copy of petitioner's patent and copy of the publication reference in issue are attached hereto as an appendage.

The case was tried before the District Court on October 1 and 2, 1942. The Court wrote no memorandum opinion, but filed findings of fact and conclusions of law (R. pp. 15-18) substantially to the effect that (1) the claim was invalid for lack of patentable invention over certain named patents (not naming the publication "Automotive Industries," relied upon by the Circuit Court of Appeals); (2) for anticipation by a foreign publication; and (3) because the reissue patent covered a different invention from the original patent.

After appeal to the Circuit Court of Appeals for the First Circuit, but before hearing, motions to remand were made before the Court of Appeals and before the District Court to reopen the case for introduction of additional evidence. The motions were denied. After the hearing before the Circuit Court of Appeals, an opinion, dated July 20, 1944, approximately six months after the hearing, was rendered, generally affirming the decision of the District Court, but holding the patent invalid on a new ground, i.e., anticipation by an article written by W. F. Bradley and F. Gerster appearing in the printed publication titled "Automotive Industries," dated June 16, 1921. The Lower Court, although having this reference before it, made no mention thereof in its decision.

In relying on this publication (copy in appendix and detailed sketches in supporting brief) as an anticipation of petitioner's invention, the Appellate Court made serious errors, apparent on the face of the opinion, as to both the construction and operation of the brake system illustrated in said publication and in failing to properly apply the reference to the claim of the patent in issue. The Court overlooked certain details of construction in the drawing of this reference, to wit, springs, and incorrectly interpreted the operation of the brake system by relying on a description (later repudiated by a co-author) which

when applied to the structure does not truly describe the operation. With a spring structure as shown, the brake system could not possibly operate as construed by the Court. This is clearly illustrated in sketches attached to petitioner's supporting brief, hereinafter referred to, which point out clearly the differences in structure, mode of operation and results achieved between the petitioner's patent and the reference relied on by the Court.

The Appellate Court further seriously erred in holding that an inspection of Figure 5 of the reference publication would show to any draftsman or mechanic what the plaintiff "says" is covered by his Claim 29. The issue involved *the claim* and the reference could not be interpreted to be an anticipation of the patent unless it is shown to be an anticipation of *the claim*. It is not a question of what someone "says is covered" by the claim, but what the claim, in fact, defines. The Court made no specific application of the reference to the claim in issue.

The Appellate Court further erred in holding that the publication reference discloses a structure which has the same mode of operation and produces the same results as that of the petitioner. This error is clear from an examination of the modes of operation of the two structures illustrated in the sketches forming a part of petitioner's supporting brief.

A petition for rehearing, after suitable extensions of time were granted, was filed on October 14, 1944, with a renewal of the motion to remand. The petition and the renewed motion were denied without comment by the Court of Appeals on October 19, 1944.

This Court has jurisdiction to review the judgment of the Circuit Court of Appeals on the authorities set forth in the Reasons Relied upon for Allowance of the Writ hereinafter presented.

Questions Involved

1. When a Circuit Court of Appeals has so far departed from the accepted and usual course of judicial proceedings by sustaining the decision of a Lower Court on invalidity but on grounds entirely distinct from those relied on by a District Court and only barely referred to in the record, denies a petition to remand and denies a petition for rehearing, should a petitioner be granted certiorari under the exercise of this Hon. Court's power of supervision, to appeal from, rebut and argue against the new ground of decision advanced for the first time by the Circuit Court?

2. Will this Court grant certiorari to correct errors of law clearly apparent on the face of the opinion and a clearly erroneous legal interpretation in the opinion of a skeletonized schematic sketch appearing in a publication?

3. Will this Court grant certiorari to correct a ruling violating the following well defined principles of patent law?

(a) The principle of patent law that an anticipation of a patent must clearly disclose the claimed invention beyond a reasonable doubt.

(b) The principle of patent law that a combination of elements producing a new mode of operation and a new and beneficial result is patentable.

(c) The principle of patent law that a disclosure in a prior publication, in order to defeat a patent, must present a substantial reproduction of the patented improvement in such full, clear and exact terms as to enable any person skilled in the art or science to which it appertains to make, construct and practice the invention so patented.

(d) The principle of patent law that it is not sufficient to constitute an anticipation of the patent that the device

relied upon might be modified to accomplish the functions performed by the patent in question, if it were not designed by its maker or adapted or actually used for the performance of such functions.

(e) The principle of patent law that a patent should be construed, if possible, to be upheld.

4. Will this Court permit the well defined principles of patent law, vital to the public interest, set forth in the previous question 3, to be slowly emasculated and eventually overruled in effect by failing in all instances to grant certiorari on the ground that these questions of mixed law and fact are merely questions of fact?

5. Will this Court grant certiorari when a Circuit Court of Appeals gives a rather warped interpretation of the structure, mode of operation and result of a disclosure in a publication, holding said publication to be an anticipation, when the Court of Customs and Patent Appeals, expert in patent matters, has discarded said publication as being of no pertinence in substantially a similar situation?

6. Will this Court grant certiorari without other conflict of decisions when the patent has expired since suit was instituted, and all other manufacturers, except respondent, long since discontinued use of the invention of said patent?

Reasons Relied On for Allowance of the Writ

The discretionary power of this Court is invoked upon the following grounds:

1. Because the Circuit Court of Appeals, in overruling all three grounds of the decision of the District Court and relying on a ground not relied on below, denying a petition for rehearing and denying a petition to remand, has so far departed from the accepted and usual course of judicial

proceedings as to call for an exercise of this Court's power of supervision, under authority of *Magnum Import Co.* v. *Coty*, 262 U. S. 159; *E. H. Ferree Co.* v. *United Shoe Machinery Co.*, 290 U. S. 614 and 708; and Supreme Court Rule 38, Par. 5 (b).

2. Because of errors clearly apparent on the face of the opinion of the Circuit Court of Appeals. The Appellate Court erred in holding that an inspection of Figure 5 of the reference publication would show to any draftsman or mechanic what the plaintiff "says" is covered by the claim, when the subject matter in issue is the *claim* itself and not what someone may say the claim covers. The Appellate Court erred in overlooking the operation of the springs on the rear wheel brake connections of the reference publication and further erred in failing to apply the reference publication specifically to the terms of the claim in issue which would have disclosed, as defined by the claim, that the reference did not reveal "means connecting said hand lever to said controller shaft to cause rotation thereof to apply (all) braking means" or "means connecting said foot pedal to said controller shaft to cause rotation thereof to actuate (all) said braking means". Had the reference publication been applied to the claim in issue, it would also have disclosed omission from said reference of the elements defined in the last five lines of the claim in issue which are directed to a specific lost motion connection. These errors, clearly apparent on the face of the opinion, apparent from the correct reading of the reference publication, and apparent from the reading of the claim in issue, call for correction under the supervisory power of this Court by authority of *Magnum Import Co.* v. *Coty*, Supra, and *E. H. Ferree Co.* v. *United Shoe Machinery Co.*, Supra, and Supreme Court Rule 38, Par. 5(b).

3. Because the decision of the Circuit Court of Appeals involves a Federal question decided in a way clearly in conflict with applicable decisions of this Court and of its own Circuit on the following well defined principles of law, under authority of Sup. Ct. Rule 38, Par. 5 (b); *McCormick* v. *Burnat*, 283 U. S. 784; *Miller* v. *Standard Nut Margarine Co. of Florida*, 284 U. S. 498; *Radio Corp. of America* v. *Raytheon Mfg. Co.*, 296 U. S. 459; and *DeForest Radio Co.* v. *General Electric Co.*, 283 U. S. 664.

(a) The principle of patent law that an anticipation of a patent must clearly disclose the claimed invention beyond a reasonable doubt, as set forth by this Court in *Barbed Wire case*, 143 U. S. 275; *Deering* v. *Winona Harvester Works*, 155 U. S. 300; *Adamson* v. *Gilliland*, 242 U. S. 350; *Eibel Co.* v. *Paper Co.*, 261 U. S. 60, has been ignored by the Circuit Court of Appeals.

(b) The principle of patent law that a combination of elements producing a new mode of operation and a new and beneficial result is patentable, as set forth by this Court in *Webster Loom Co.* v. *Higgins*, 105 U. S. 580, and *Diamond Rubber Co.* v. *Consolidated Power Co.*, 220 U. S. 428, has been ignored by the Circuit Court of Appeals.

(c) The principle of patent law that a disclosure in a prior publication, in order to defeat a patent, must present a substantial reproduction of the patented improvement in such full, clear and exact terms as to enable any person skilled in the art or science to which it appertains to make, construct and practice the invention so patented, as set forth by this Court in *Seymour* v. *Osborne*, 78 U. S. 516, and *Eames* v. *Andrews*, 122 U. S. 40, has been ignored by the Circuit Court of Appeals.

(d) The principle of patent law that it is not sufficient to constitute an anticipation of the patent that the device

relied upon might be modified to accomplish the function performed by the patent in question, if it were not designed by its maker or adapted or actually used for the performance of such functions, as set forth by this Court in *Topliff* v. *Topliff*, 145 U. S. 156, and *Krementz* v. *Cottle Co.*, 148 U. S. 562, has been ignored by the Circuit Court of Appeals.

(c) The principle of patent law that a patent should be construed, if possible, to be upheld, as set forth in the following cases from various Circuits, *Mossberg* v. *Nutter*, 135 Fed. 95; *Malignani* v. *Jasper Marsh Co.*, 180 Fed. 442, and *Sun Ray Corp.* v. *Bellows-Claude Neon Co.*, 49 Fed. (2d) 886, has been ignored by the Circuit Court of Appeals.

4. Because there is a conflict between the reasoning in decision of Circuit Court of Appeals of the First Circuit, in deciding the instant case, and the reasoning in decision of the U. S. Court of Customs and Patent Appeals in the case of *In Re Dodge*, 74 Fed. (2d) 756, in which the pertinency of the "Automotive Industries" reference publication was involved. The Dodge case involved an ex parte appeal by the party Dodge who was formerly a party to an interference in the United States Patent Office with the application of this petitioner. On appeal to the Court of Customs and Patent Appeals, the reference publication, "Automotive Industries", in the instant case was subject matter for consideration by the Court and was discarded as a reference for anticipation of the Dodge invention, notwithstanding the fact that the subject matter of the latter application was formerly in interference with the application of this petitioner. The expert Court of Customs and Patent Appeals, therefore, substantially disagrees with the Circuit Court of Appeals of the First Circuit in the effect of the weight to be given the reference publication in issue herein. This conflict warrants grant of the Writ of Certio-

rari, we submit, under authority of *Sanitary Refrigerator Co.* v. *Winters*, 280 U. S. 30, and Sup. Ct. Rule 38, Par. 5 (b).

5. Certiorari should be granted, since further conflict of decisions is now impossible, the patent in suit having expired and all manufacturers having discarded the subject matter of the patent, to wit, mechanical brakes, for hydraulic brakes. Authority therefor: *Paramount Publix Corp.* v. *American Tri-Ergon Corp.*, 294 U. S. 464; *Altoona Publix Theatres, Inc.* v. *American Tri-Ergon Corp.*, 294 U. S. 477; and *Mackay Radio & Telegraph Co.* v. *Radio Corp. of America*, 40 U. S. P. Q. 199.

Prayer

Wherefore, your petitioner respectfully prays that a Writ of Certiorari be issued under the seal of this Court directed to the U. S. Circuit Court of Appeals for the First Circuit to the end that this cause may be reviewed and determined by this Court in accordance with the principles of law heretofore announced by it and under its general supervisory powers to avoid the miscarriage of justice; that the judgment of the Circuit Court of Appeals be reversed and Des Rosiers Reissue Patent No. 20,086 of September 16, 1936, be held valid and infringed, and that the petitioner be granted such other and further relief as may seem proper.

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THOMAS A. JENCKES,
Of Counsel.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The Opinions of the Courts Below

The findings of fact and conclusions of law of the District Court of the United States for the District of Massachusetts, appear on pp. 15-18 of the record and the opinion of the United States Circuit Court of Appeals for the First Circuit appears on pp. 185-193 of the Transcript and in 143 Fed. 2(d) 907.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered July 20, 1944, (R. p. 193) and the opinion was filed July 20, 1944, (R. p. 185-193). The statute giving this Court jurisdiction is Section 240(a) of the Judicial Code, as amended, (28 U. S. Code Sec. 347). The judgment was rendered in a suit in equity brought under the Patent Statutes to determine the validity and infringement of Letters Patent. The authorities relied upon to sustain jurisdiction are:

Revised Rule 38, Par. 5 (b) of the Revised Rules of the Supreme Court of the United States;

Magnum Import Co. v. *Coty*, 262 U. S. 159;

E. H. Ferree Co. v. *United Shoe Machinery Co.*, 290 U. S. 614 and 708;

McCormick v. *Burnat*, 283 U. S. 784;

Miller v. *Standard Nut Margarine Co. of Florida*, 284 U. S. 498;

Radio Corp. of America v. *Raytheon Mfg. Co.*, 296 U. S. 459;

DeForest Radio Co. v. *General Electric Co.*, 283 U. S. 664;

Sanitary Refrigerator Co. v. *Winters*, 280 U. S. 30;
Paramount Publix Corp. v. *American Tri-Ergon Corp.*, 294 U. S. 464;
Altoona Publix Theatres, Inc. v. *American Tri-Ergon Corp.*, 294 U. S. 477;
Mackay Radio & Telegraph Co. v. *Radio Corp. of America*, 40 U. S. P. Q. 199.

Statement of the Case

The foregoing petition contains a summary of the material facts necessary to an understanding of the reasons relied upon for the allowance of the Writ, as well as the statement of the questions involved in the case. However, for a better understanding of the issues, a brief discussion of the claim in issue is here submitted.

Reading the Claim 29 of Des Rosier's Reissue Patent on Figures 10 to 14 thereof, with reference characters applied, we find the following:

> In a brake control device, *a* controller shaft (24), *braking means* actuated on rotation of said controller shaft, (front wheel brakes actuated by rods 32 and rear wheel brakes actuated by rods 28), a hand lever (52) pivotally mounted on the vehicle, a foot pedal (34) pivotally mounted on the vehicle, means (sleeve 60 connected to hand lever 52, arm 50 projecting integrally therefrom, rod 66 projecting from controller shaft 24) connecting said hand lever to *said controller shaft* 24 to cause rotation thereof to *apply the braking means*, and means connecting said foot pedal (34) *to said controller shaft* (24) to cause rotation thereof to *actuate said braking means*, including a link (92) pivotally connected to said foot pedal (34) having a head (94) threadedly adjustable thereon having a slot (96) in the end thereof near the controller shaft (24) and an arm (82) projecting from said controller shaft (24) having a pin (98) therein adapted to register in said slot (96).

It will be seen that it calls for *a* or *one* controller shaft and "braking means" actuated on rotation of said controller shaft, thus in Figure 10 rotation of *the single* controller shaft 24 operates through the rods 28, the rear wheel braking means and through the rods 32, the front wheel braking means (as referred to in line 2). Referring to line 7 of the claim, the phrase "the braking means," therefore, means the same braking means as referred to in line 2, namely both those for the front wheel and rear wheel brakes and "said braking means" in line 9 refers to the *same braking means* for the front wheel and rear wheel brakes as referred to in lines 2 and 7, thus both the hand lever and the foot pedal *must actuate a single controller shaft* and apply all of the *same braking means* in each instance through the *same controller shaft.* In other words, all four brakes on the four wheels are simultaneously actuated equally from a single controller shaft when either the foot pedal or the hand lever is actuated, or both are actuated together.

This was the interpretation placed on the claim by the expert examiner of the Patent Office upon allowance of the application over the reference publication "Automotive Industries," dated June 16, 1921. It was this reference publication, however, that was relied upon by the Circuit Court of Appeals, giving a different interpretation thereto, for invalidating this claim. In rendering its opinion, relying on this publication, the Appellate Court, however, overruled all of the grounds for the decision in the District Court.

It had been realized in the early stages of the manufacture of automobiles that it was desirable to provide brakes on the front wheels as well as the rear wheels. While it was apparently simple enough to apply the same braking pressure on one brake on each of the rear wheels, since each continuously rotated in the same plane, an inherent diffi-

culty and problem existed in applying suitable braking pressure to the front wheels by reason of the swivelling of said front wheels as they were turned for steering purposes. There was a continuous demand for more and heavier brakes, but the only suggestions for applying braking pressure to the front wheels involved complicated structures.

Des Rosiers first found out that the successful operation of brakes depended on the evenness of wear on each brake, for if one brake wore more than another, it would cease to function on movement of a common actuator, and if one or more of the remaining brakes then wore more it would successively be put out of action on movement of a common actuator until only one wheel brake worked. The teachings of the prior art provided for each brake wearing different amounts with compensation provided between the brakes for wear. *The petitioner was the first to realize that if equal pressure was at all times applied through a common actuator (a new mode of operation), all of the brakes would be worn equally and evenly (a new and beneficial result).*

The prior art thought that complicated equalizers, springs or controller shafts for the brake on each wheel were necessary to compensate for varying degrees of wear of each brake, which occurred particularly on the front wheel brakes when swivelling. The petitioner provided a system which furnished equal pressure at all times on each of the brakes and thereby was able to ignore the effect of swivelling of the front wheels in use. This concept of applying equal pressure by equal movement of the brake applying means for each brake is set forth in the claim which calls for a single controller shaft and braking means (namely for all the brakes) actuated by the rotation of said controller shaft. The movement of this single controller shaft transmitted equally and evenly to each brake insured the same movement of the brake applying means on each wheel and hence, equal wear. In the "Automotive Industries"

publication, relied on by the Appellate Court for anticipation, the movement of the single controller shaft was not transmitted equally to each brake but purposely varied by the lost motion connection springs described more fully later on in the brief.

The respondent for a long while did not appreciate the efficacy of petitioner's invention. It still believed that complicated equalizers were necessary and put them in use on the Model A Ford automobiles (R. 96, 97). Finally, to its surprise, the respondent found that equalizers were no longer necessary with the petitioner's simplified structure and that same provided equal wear on all brakes with equalizers eliminated (R. 96, 97). Thereupon, the respondent adopted and used, for a period of six years, without the consent of the petitioner, a braking system employing petitioner's invention. Other manufacturers did likewise, although the latter abandoned mechanical four wheel brake systems long prior to the respondent herein. As a matter of fact, the petitioner's invention was largely responsible for the repeal in many States of laws which at that time required a multiplicity of separate and independent braking systems for automobiles (R. 70, 71 and 100).

Specification of Errors

The specification of errors herein relied upon are those heretofore set forth in the Petition as reasons for the allowance of the Writ, and for sake of brevity are not here repeated.

Summary of Argument

The points of the argument follow the reasons relied upon in the petition for the granting of the Writ and for the sake of brevity are not here repeated.

ARGUMENT

Point I

Departure From Accepted Legal Proceedings

The Circuit Court of Appeals, by its decision herein, has in effect overruled all three conclusions of law filed by the District Court but, in deciding against the petitioner, has utilized an entirely new and additional ground, barely referred to in the record, although fully considered by the Patent Office in the granting of the petitioner's patent. The Appellate Court did not rely for anticipation of petitioner's patent on the patents and publication used by the District Court, but selected the printed publication titled "Automotive Industries," dated June 16, 1921, and held that this publication, with certain revisions, constituted an anticipation. Incidentally, this particular publication was before the Examiner in the Patent Office and in the file wrapper of the application resulting in the patent in issue. The selection by the Appellate Court of such a new ground for anticipation, without petitioner having had a chance to rebut or argue the same, since the Court has denied all petitions for rehearing and remand, results in a departure from the accepted and usual course of judicial proceedings. The petitioner is substantially denied his day in Court and his usual right to appeal from, rebut and/or otherwise argue against the new ground of the decision advanced for the first time by the higher Court. We submit that the Appellate Court should have granted the Petition for Rehearing or the Motion to Remand, in order to consider arguments, or if remanded, evidence, as to the construction and mode of operation of the disclosure of the reference publication, there having been no previous full and complete discussion thereof in the record. It is submitted that in this instance,

the Circuit Court of Appeals has clearly exceeded its proper scope of review, having construed and overruled all conclusions of law in the lower Court favorable to the petitioner yet reaching out beyond its authority and selecting an additional reference publication for use as anticipation, which reference, to say the least, is ambiguous. Such a radical departure from the accepted and usual course of judicial proceedings has so impaired the petitioner's rights as to call for the exercise of this Court's power of supervision under Rule 38, Par. 5 (b), and particularly under the authority of *Magnum Import Co.* v. *Coty*, 262 U. S. 159, and *E. H. Ferree Co.* v. *United Shoe Machinery Co.*, 290 U. S. 614 and 708.

POINT II

Clear Error Apparent on Face of Opinion

The Court held the disclosure in the article appearing in the publication "Automotive Industries" to be an anticipation of the petitioner's invention as claimed (Claim 29). Even a casual inspection of the drawing of this publication will reveal springs between the controller shaft and the rear wheels, which the Court overlooked or ignored entirely. Such springs make it impossible for the structure employing same to transmit movement of the single controller shaft evenly to the respective brakes.

The Court in ruling that the disclosure in the reference publication anticipates what the petitioner contended was covered by his claim is equivalent to stating that the reference disclosed the same mode of operation and produced the same result as the petitioner's invention. In fact, it is apparent on the face of the record that the modes of operation of the two structures in issue are not only different, and necessarily so by reason of the use of springs in the reference, but accomplish different results. In fact, the

reference did not solve the problem which Des Rosiers' invention solved and which solution resulted in the wide application and use of the Des Rosiers brake system.

The Appellate Court decision (R. 193) refers to the Figure 5 of the reference publication as showing "to any draftsman or mechanic what the plaintiff *says* is covered by his Claim 29." It is fundamental in patent law that the protection afforded by a patent is that defined by *the claim*, and not what someone "says" the patent covers. To anticipate the claim in issue, it was the duty of the Court to apply the reference to the terms of the claim and show wherein such terms were answered. This the Court failed to do.

In fact, had the Court followed the accepted practice of law and attempted to apply the reference publication to Claim 29, it would also be apparent that said reference did not reveal "means connecting said hand lever to said controller shaft to cause rotation thereof to apply (all) braking means," nor did it reveal "means connecting said foot pedal to said controller shaft to cause rotation thereof to actuate (all) said braking means." Furthermore, an attempted application of the reference to the claim would have revealed that the subject matter of the last five lines of the latter, directed specifically to a pin and slot type of lost motion connection, was not present in the publication.

(Here follow 2 drawings.)

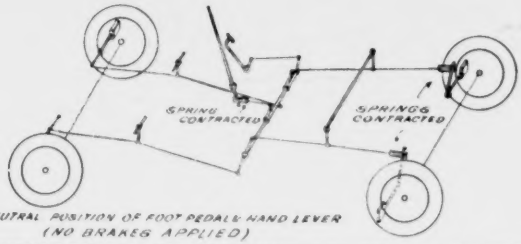
Views showing Operation of Brake System

disclosed in

Automotive Industries Publication

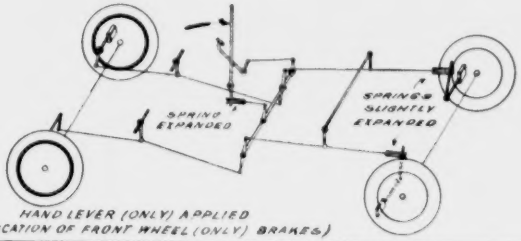
(Darracq)

Fig. 1



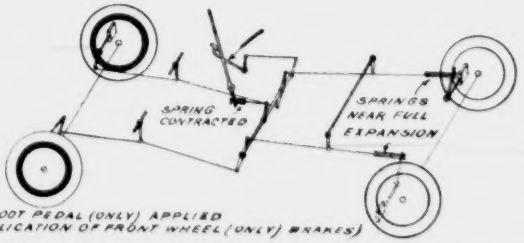
NEUTRAL POSITION OF FOOT PEDAL & HAND LEVER
(NO BRAKES APPLIED)

Fig. 2



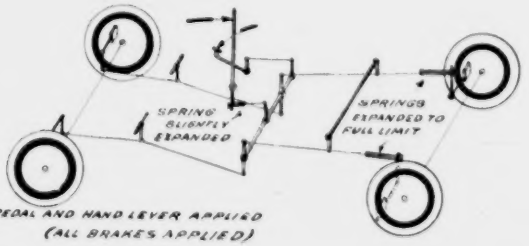
HAND LEVER (ONLY) APPLIED
(SLIGHT APPLICATION OF FRONT WHEEL (ONLY) BRAKES)

Fig. 3



FOOT PEDAL (ONLY) APPLIED
(HEAVY APPLICATION OF FRONT WHEEL (ONLY) BRAKES)

Fig. 4



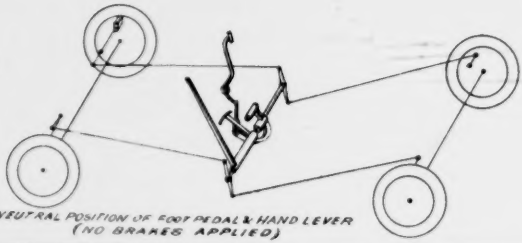
FOOT PEDAL AND HAND LEVER APPLIED
(ALL BRAKES APPLIED)

Views showing Operation of Brake System

Disclosed in

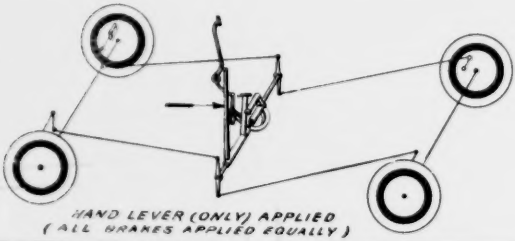
Petitioners Patent

Fig. A



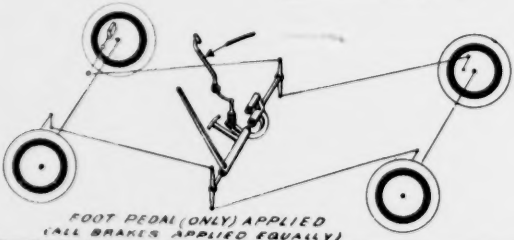
NEUTRAL POSITION OF FOOT PEDAL & HAND LEVER
(NO BRAKES APPLIED)

Fig. B



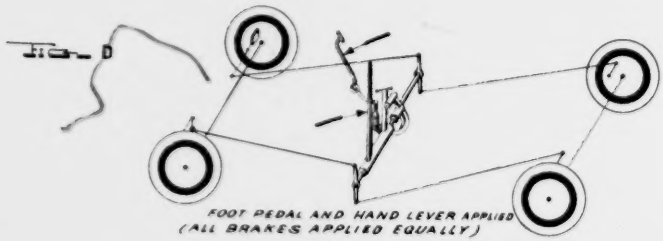
HAND LEVER (ONLY) APPLIED
(ALL BRAKES APPLIED EQUALLY)

Fig. C



FOOT PEDAL (ONLY) APPLIED
(ALL BRAKES APPLIED EQUALLY)

Fig. D



FOOT PEDAL AND HAND LEVER APPLIED
(ALL BRAKES APPLIED EQUALLY)

In amplification of the foregoing list of errors apparent on the face of the opinion of the Appellate Court, we suggest a comparison be made between the actual structures of the patent in suit and the reference publication, as to the respective modes of operation and results achieved thereby. In order to aid this Court in the comparison suggested, we have annexed in the following pages two sheets of drawings, each containing four views showing the operation of the brake system of petitioner's patent and the reference "Automotive Industries" publication. The figures are arranged on each sheet so that the controls of the respective structures correspond, as, for instance, the first figure at the top of each page shows a neutral position of both foot pedal and hand lever, whereupon no brakes are applied. In the second figure (reading down the page) only the hand lever is applied. Merely a casual comparison of these figures (Fig. 2 of reference and Fig. B of patent) shows a marked distinction in the results. For instance, whereas the reference under such conditions shows a slight application of front wheel brakes only, the petitioner's patent with the hand lever only applied shows all four brakes simultaneously applied equally. Again, by a comparison of the third figure of each sheet, wherein the foot pedal only is applied, we find a marked distinction, since in the reference such action will only result in a heavy application of the front wheel brakes only, whereas, in the patent, application of the foot pedal results in all four brakes being simultaneously and equally applied, just as was true in the previous application of the hand lever. Again, the fourth or lowermost figure in each sheet shows an application simultaneously of both foot pedal and hand lever at which time, in both instances, all four brakes are applied, although the application of *equal* pressure on the brakes may only be had by the patented structure. The lack of equal pressure on the brakes in the reference is due to the in-

clusion in that structure of expansible springs between the controller shaft and the rear wheels, the details of which will be discussed herebelow.

Particular attention is called to the fact that in order to effectively apply all four brakes in the reference (Fig. 4) both the foot pedal and the hand lever must be applied. In contradistinction thereto, all four brakes of the patent may be applied simultaneously and equally by either application of the hand lever alone (Fig. B) or application of the foot pedal alone (Fig. C). Obviously, therefore, the reference structure is incapable of accomplishing the same results as achieved by the patent structure. This statement and showing leads to the question of why the reference cannot accomplish the same results as the patented structure and the answer is a difference in construction with a difference in mode of operation, which apparently the Appellate Court entirely overlooked.

In order to explain the difference in structure, it must be stated that in preparing the drawing of the reference, Fig. 4 thereof was reproduced (with the exception of the heavy brake-band illustration) from Fig. 5 of the publication. The remaining figures offer the only logical explanation of the application of the brakes and the positions of the spring structures upon the actuation of either the foot pedal or the hand lever or both, as more fully explained herebelow.

Des Rosiers' application while pending in the Patent Office was involved in an interference with an application of the party Dodge, assignor to the Bendix Brake Company, the file of which record interference is defendant's exhibit Q of this record. During the course of this interference and the present suit, fourteen different explanations of Figure 5 of the publication reference in issue have been presented. We submit that our interpretation of the

operation of this reference structure, as mentioned hereabove, and more fully explained herebelow, is the only logical one of the various explanations offered to date.

In this reference publication, a spring is located in the connection between the hand lever and the controller shaft and identical springs are shown at the rear of each connection between the controller shaft and each rear wheel brake. The Appellate Court, no doubt properly, states that a lost motion connection (probably meaning the first mentioned spring) is indicated between the hand brake lever and the controller shaft. However, he failed to mention the other two springs for the rear wheel brakes, nor did he give any consideration to the action thereof nor to the results achieved by the action thereof. These springs were placed there for some purpose and they must perform some function. Examination of Figure 5 of the reference publication shows that the foot pedal and also the hand lever are applied, so that the four brakes must necessarily be in effective braking position. Hence, we have so illustrated the brakes in Fig. 4 of the annexed sketches. In this position of the lever and foot pedal, the two rear springs at the rear wheels are necessarily expanded to the full limit, so they no longer function as lost motion connections, but permit application of the brake pressures to the rear wheels. In this position the spring connected with the hand lever, which is also a lost motion connection, must necessarily be only slightly expanded.

In the neutral position of the structure, as shown in Fig. 1, all three of the springs are contracted. Upon application of the hand lever only (Fig. 2) the spring between the hand lever and the controller shaft is necessarily expanded, but the two rear springs are only slightly expanded, to function as lost motion connections. A mild braking action thus takes place on the front wheels, as indicated by the heavy circular lines on the front wheels of

Fig. 2. No braking effect takes place on the rear wheels, since the lost motion spring connections have not at that stage been expanded to their fullest extent. Upon the application of the foot pedal (Fig. 3), the brakes on the front wheels will be heavily applied, as shown by the more heavily denoted circular black lines in said figure. In such an application, the rear spring connections are expanded to a point near their limit of expansion, yet failing said limit merely act as lost motion connections and prevent any application of rear wheel brake pressure. As aforesaid, when both the foot pedal and the hand lever are applied the rear springs are expanded to their fullest limit, so that they no longer function as lost motion connections, but permit the application of the rear, as well as the front wheel, brakes.

As aforesaid, this is an entirely different structure and mode of operation from that disclosed by the patentee. In addition, attention is directed to the fact that the patentee's structure permits equal pressures to be applied to all four wheels at all times, so that all brakes will wear evenly. With the structure of the reference, however, evenness of wear is impossible. If the hand lever or foot pedal only are applied only the front brakes will be worn and when both are applied together, both the front and rear wheel brakes will be worn. Thus the front wheel brakes are subject to much more wear than the rear wheel brakes and hence, Des Rosiers' new and beneficial result of equal wear on all brakes was never achieved in the reference structure.

We submit that these errors found on the face of the opinion of the Circuit Court of Appeals, apparent from a reading of the reference publication and apparent from a reading of the claim in issue, call for correction under the supervisory power of this Court. (Supreme Court Rule 38, Par. 5 (b); *Magnum Import Co.* v. *Coty*, supra; and *E. H. Ferree Co.* v. *United Shoe Machinery Co.*, supra.)

Point III

Decision in Conflict With Previous Decisions of the Supreme Court and of the First Circuit

In deciding the case, the Circuit Court of Appeals, relying on a new ground, gave its own warped interpretation to a diagrammatic and skeletonized drawing in a reference publication and held the same to be an anticipation, with possible changes therein, of the patent in suit.

(a) As aforesaid, the application of the patent in suit was involved in an interference with the party Dodge (respondent's exhibit Q). In the record of that case and in the instant case, as aforesaid, some fourteen different and, doubtless, sincere opinions were presented as to the structure and operation of the reference publication in issue. It is only a diagrammatic showing and if petitioner's interpretation of its structure and operation be not accepted, certainly then this skeletonized drawing must be considered vague, indefinite and ambiguous. Certainly this reference does not clearly disclose the claimed invention beyond a reasonable doubt, a principle of law established by this Court in *Barbed Wire* case, 143 U. S. 275; *Deering* v. *Winona Harvester Works*, 155 U. S. 300; *Adamson* v. *Gilliland*, 242 U. S. 350; *Eibel Co.* v. *Paper Co.*, 261 U. S. 60. We know of no decisions of this Court repudiating the aforementioned decisions sustaining this principle of law.

(b) As heretofore shown by the comparison between the detailed annexed drawings of the patent and the reference a new mode of operation producing a new and beneficial result was presented by the patentee. Notwithstanding the erroneous reasoning of the Appellate Court, it will be seen that the Des Rosiers device has an entirely different mode of operation from that of the reference publication and pro-

duces a new result, namely, that the brakes wear evenly on continued even braking pressure on all of the brakes in use. As a result thereof, the Des Rosiers brake system displaced the complicated brake structures, such as that of the reference, wherein different brakes were applied at different times, thereby causing unevenness in wear, which, obviously, prevented effective braking action. The principle of law applicable to such a situation, established in *Webster Loom Co.* v. *Higgins*, 105 U. S. 580, and *Diamond Rubber Co.* v. *Consolidated Power Co.*, 220 U. S. 428, we submit, has never been overruled.

(c) The reference publication, as shown heretofore, does not meet the structure shown and claimed in the patent, nor is it intended to operate in the same manner. As aforesaid, the use of springs between the controller shaft and the rear wheel brakes in such reference presents a widely different structure, causing an entirely different operation and result from that revealed by the patentee. Nevertheless, the Appellate Court relied on this reference as an anticipation, although stating that additions might be made thereto to produce what the patentee disclosed. In order to defeat a patent, a prior publication must present a substantial reproduction of the patented improvement in such full, clear and exact terms as to enable any person skilled in the art to which it appertains to make, construct and practice the invention. As aforesaid, some fourteen different interpretations of the construction and operation of this reference have been presented. This alone would seem to indicate that the publication is not sufficiently full, clear and exact in terms to enable one skilled in the art to produce same. The explanation of the Appellate Court as to the construction and operation is diametrically opposed to that of the petitioner. The Courts in various Circuits throughout the United States are agreed on this principle of law,

established by this Court in *Seymour* v. *Osborne*, 78 U. S. 516 and *Eames* v. *Andrews*, 122 U. S. 40. See *Permutit Co.* v. *Wadham*, 13 Fed. (2d) 454; *Victor Talking Machine Co.* v. *John Wanamaker*, 275 Fed. 452; *Atlantic Gulf & Paper Co.* v. *Wood*, 288 Fed. 148.

The Appellate Court relied on three cases for its contention that drawings may be used to anticipate as well as words, if they teach to the art what the patentee claims as his invention. Petitioner does not take issue with the Court on this principle of law, but does take issue with the Court on the application of the principle to the situation at bar, since the disclosure in the reference publication does not reveal the structure and mode of operation of the patentee in sufficiently clear, full and exact terms. In one case cited by the Court, *Jockmus* v. *Leviton*, the drawings there were held *not* sufficiently complete to be an anticipation for lack of complete disclosure, as is true with the reference in the case at bar.

In another case cited by the Appellate Court, In Re *Bager*, it was expressly held that an accidental showing in a prior patent does *not* anticipate a later invention unless the earlier invention was designed, adapted or used to perform the function of the second invention. In the case at bar, we have already shown that the reference publication was not designed, adapted or used to perform the function of petitioner's invention.

In the third case, In re *Boyd*, relied on by the Court, it was held that a description for purposes of anticipation may be by drawings alone, but there is nothing in this decision which refutes the well-known and established principle of law that the drawings to be relied upon as anticipations must be full, clear and in exact terms, so as to enable any person skilled in the art to produce or practice the same. That condition has not been met by the reference publication relied on by the Circuit Court of Appeals. The rule

of law established by this Court in *Seymour* v. *Osborne* and *Eames* v. *Andrews*, supra, has not been repudiated.

(d) The reference publication is a skeletonized diagrammatic view of an alleged four wheel brake system. The Appellate Court stated that a lost motion connection could be added thereto which is indication that the showing is not full and complete. It would be more than a mere addition of a feature to modify this reference structure by stripping it of the two springs illustrated therein on the rear wheel brake connections and connect the foot pedal by a lost motions connection to the controller shaft and make each of the connections from the controller shaft to the rear wheel brakes rigid. Such a modification would be necessary to achieve the Des Rosiers structure and the new and beneficial results resulting therefrom. Such a structure is not suggested in either the description or the illustration of this reference and a revision and reconstruction thereof to produce the same would, we submit, amount to the exercise of invention. Since it is apparent that this reference publication was never designed by its maker, nor adapted or actually used for the performance of the same functions as those of the patentee, and must be modified to accomplish the functions performed by the patent in question, the principle as set forth by this Court in *Topliff* v. *Topliff*, 145 U. S. 156, and *Krementz* v. *Cottle Co.*, 148 U. S. 562, never overruled, is here applicable.

(e) It is a well established principle of patent law that a patent should be construed, if possible so as to uphold same, not invalidate it. *Mossberg* v. *Nutter*, 135 Fed. 95; *Maliguani* v. *Jasper Marsh Co.*, 180 Fed. 442; *Sun Ray Corp.* v. *Bellows-Claude Neon Co.*, 49 Fed. (2d) 886; *Bragg-Kliesrath Corp.* v. *Walter S. Vogel & Co., Inc.*, 67 Fed. (2d) 521.

Point IV

Apparent Conflict of Decisions

The same reference publication "Automotive Industries" relied on as an anticipation by the Circuit Court of Appeals of the First Circuit in determining the instant case, was also before the Court of Customs and Patent Appeals as a reference for purposes of anticipation of a structure similar to that of petitioner's and discarded. As aforesaid, the application of this petitioner was, during its pendency in the Patent Office, in interference with the application of a party *Dodge*. The interference was dissolved, yet the petitioner obtained his patent over this particular reference publication in issue. However, the Dodge application was rejected by the Patent Office Tribunals and an appeal was taken to the Court of Customs and Patent Appeals. In Re *Dodge*, 74 Fed. (2d) 756, in which there was some discussion as to what is revealed by the "Automotive Industries" reference. Bearing in mind that Dodge was in interference with Des Rosiers, this petitioner, and the subject matter of the two applications had many features in common, it is interesting to note that the Court of Customs and Patent Appeals said, at page 757

> "Although the 'Automotive Industries' reference shows a lost motion connection between the emergency lever and the brakes, it does not disclose such a connection between the foot pedal and the brakes * * *."

Here is an interpretation of that reference which definitely states it does *not* disclose a connection between the foot pedal and the brakes and it is a fact that the Des Rosiers invention does disclose a lost motion connection between the foot pedal and the brakes and such lost motion connection is defined specifically in the last five lines of Claim 29.

Obviously if this "Automotive Industries" reference had been an anticipation of the Des Rosiers invention, it would have been cited as an anticipation of the Dodge alleged invention, but the Court of Customs and Patent Appeals specifically held it did not disclose certain structure common both to Dodge and Des Rosiers and did not, as a matter of fact, rely on this reference publication as an anticipation of Dodge.

We find, therefore, that the reasoning in the decision of the Court of Customs and Patent Appeals on this reference publication is substantially in conflict with the reasoning of the Circuit Court of Appeals with respect thereto. Such conflict, we submit, justifies the granting of the Writ, as provided in Supreme Court Rule 38, Par. 5 (b) and *Sanitary Refrigerator Co.* v. *Winters*, 280 U. S. 30.

Point V

No Further Conflict Possible

As aforesaid, the Des Rosiers patent in issue expired in 1942, during the pendency of this litigation, and all manufacturers of motor vehicles, including the defendant, discontinued employing mechanical four wheel brakes of the type shown by this patent some years ago. Any claims against other manufacturers appear to be barred by the Statute of Limitations. Therefore, it would appear to be substantially impossible to obtain further adjudication of this patent involving a conflicting decision in another Circuit. Under the circumstances, we submit, this Court has authority to grant the Writ herein under authority of *Paramount Publix Corp.* v. *American Tri-Ergon Corp.*, 294 U. S. 477; and *Mackay Radio & Telegraph Co.* v. *Radio Corp. of America*, 40 U. S. P. Q. 199.

Conclusion

For the reasons aforesaid, we submit that the Writ of Certiorari should be granted and the opinion of the Circuit Court of Appeals for the First Circuit reversed. Such action is most earnestly prayed for.

Respectfully submitted,

HERBERT J. JACOBI,
Attorney for Petitioner.

THOMAS A. JENCKES,
Of Counsel.

APPENDIX

I. Copy of J. B. Des Rosiers Patent Re. 20,086—Sept. 1, 1936.

II. Reproduction of Pages 1269 and 1271, of Publication, "Automotive Industries," dated June 16, 1921.

Sept. 1, 1936. J. B. DES ROSIERS Re. 20,086

VEHICLE BRAKE CONTROLLING MEANS

Original Filed June 24, 1925 6 Sheets-Sheet 1

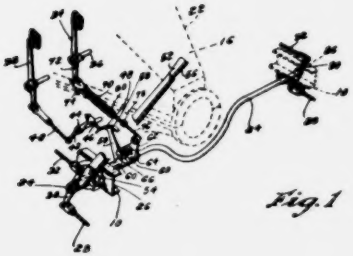


Fig. 1

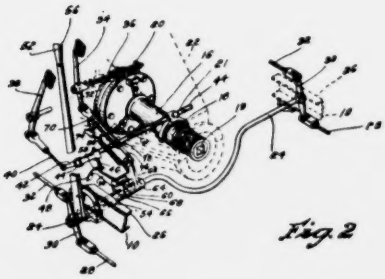


Fig. 2

Inventor

John B. Des Rosiers

by Thomas & Jacobs, Attorneys

Sept. 1, 1936. J. B. DES ROSIERS Re. 20,086

VEHICLE BRAKE CONTROLLING MEANS

Original Filed June 24, 1925 6 Sheets-Sheet 2

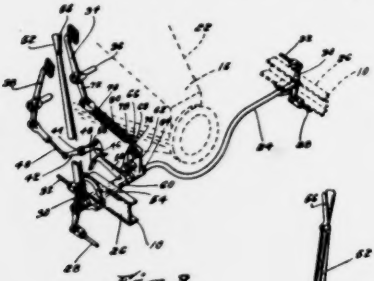


Fig. 3

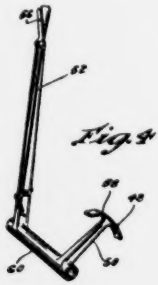


Fig. 4

Fig. 5

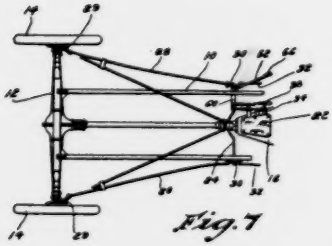


Fig. 7

Fig. 6

John B. Des Rosiers Inventor

by Thomas A. Jenckes, Attorney

Sept. 1, 1936. J. B DES ROSIERS Re. 20,086
VEHICLE BRAKE CONTROLLING MEANS
Original Filed June 24, 1925 6 Sheets-Sheet 3

Fig. 8

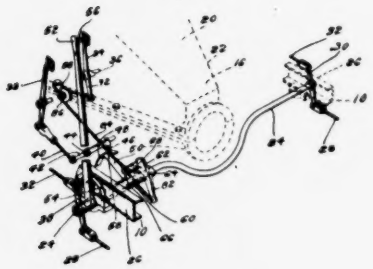
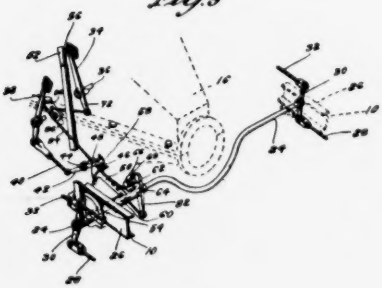


Fig. 9



Inventor
John B Des Rosiers
by Thomas A. Jenckes, Attorney.

Sept. 1, 1936. J. B. DES ROSIERS Re. 20,086

VEHICLE BRAKE CONTROLLING MEANS

Original Filed June 24, 1925 6 Sheets-Sheet 4

Fig. 10

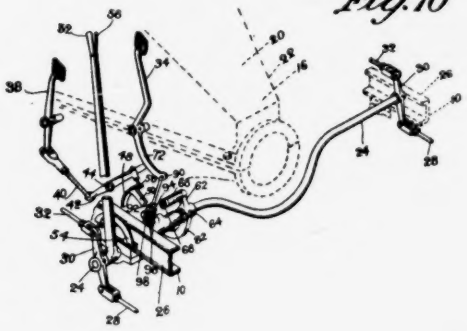
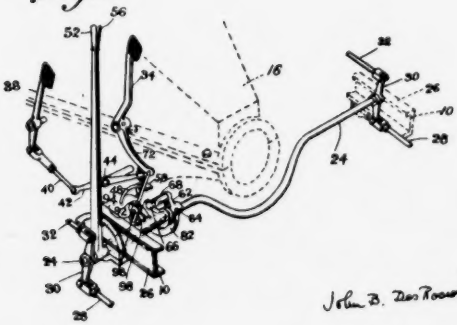


Fig. 11



Inventor

John B. Des Rosiers

by Thomas A. Saunders Attorney.

35

Sept. 1, 1936. J. B. DES ROSIERS Re. 20,086

VEHICLE BRAKE CONTROLLING MEANS

Original Filed June 24, 1925 6 Sheets-Sheet 5

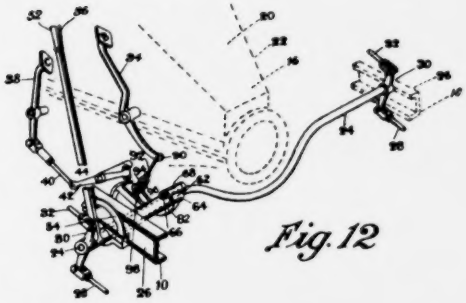


Fig. 12

Fig. 13

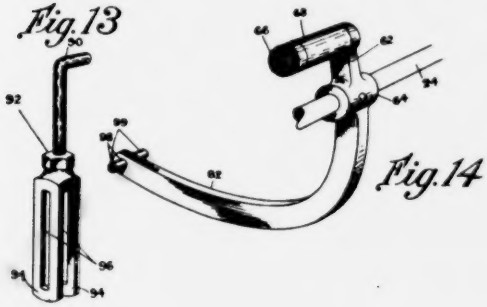


Fig. 14

Inventor

John B. Des Rosiers

by Thomas A. Jenckes, Attorney

Sept. 1, 1936. J. B. DES ROSIERS Re. 20,086

VEHICLE BRAKE CONTROLLING MEANS

Original Filed June 24, 1927 6 Sheets-Sheet 6

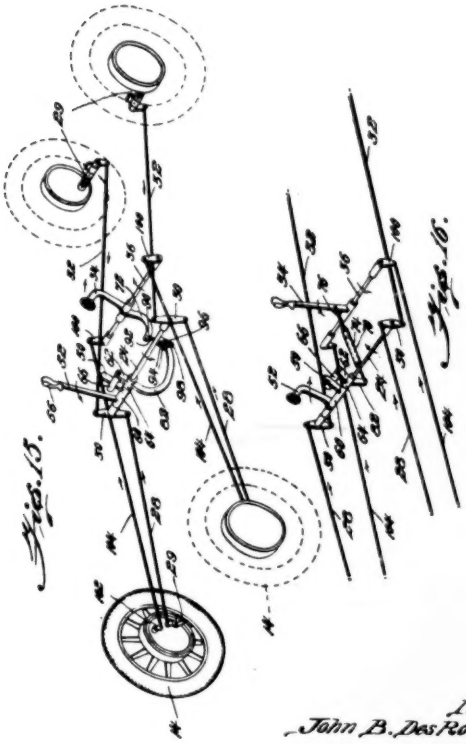


Fig. 15.

Fig. 16.

Inventor
John B. Des Rosiers
By Thomas A. Jenkins Jr.
Attorney

Reissued Sept. 1, 1936

Re. 20,086

UNITED STATES PATENT OFFICE

20,086

VEHICLE BRAKE CONTROLLING MEANS

John B. Dee Rosiers, Providence, R. I.

Original No. 1,875,231, dated March 1, 1932, Serial No. 29,297, June 24, 1925. Application for reissue February 29, 1932, Serial No. 257,846

41 Claims. (Cl. 188—3.6)

My invention relates to automobiles and comprises specifically attachments for the brake controller shafts thereof and said attachments in combination with the already existing parts thereof.

Most automobiles are usually supplied with two different types of braking mechanisms, one usually operated by a foot lever and the other usually operated by a hand lever. A clutch for connecting the power to the driving wheels is also an essential element of automobiles and when the clutch is connected, the motor of the automobile itself provides a very efficient third type of braking means which is especially useful in going down long hills. I am aware that devices for applying both types of braking means simultaneously have heretofore been provided but so far as I am aware no one has heretofore provided the simple combination about to be described. My invention makes possible the combination of one braking means, a second braking means independent of said first braking means, a clutch for connecting the power to the driving wheels (making possible a third braking means, the engine if desired), means for operating said first braking means and disengaging the clutch simultaneously independently of the other braking means (when a sudden stop is desired and it is desired to shut off the power and apply the brakes at once), and means for operating both braking means simultaneously independently of the clutch (thus permitting the motor a third braking means to function in addition to both braking means described, a very desirable condition when going down long hills).

It is thus one object of my invention to provide a device which will permit both brakes to function and the motor to act as a further brake on the engine at the same time.

A further object of my invention is to provide a device which will apply the brakes and disconnect the power at once if a sudden stop is desired.

In practice the foot brake is chiefly used by the operator and the result is that its brake band becomes quickly worn out, while there is practically no wear at all on the other brake. A further object of my invention is to double the stopping efficiency by having both sets of brakes applied at once and to equalise the wear between both sets of brakes. As will become apparent I provide a one way connection between the foot pedal which operates one brake and the controller shaft which operates the other brake whereby both brakes may be applied on the pressure of the foot pedal, said connection also permitting the controller shaft brake to be applied alone.

I provide the broad advantages portrayed above in a device which is simplicity itself, which can be applied to already existing automobiles at a very slight cost, which is very easily adjusted and which may be readily attached. In the drawings I have shown an embodiment of my invention specifically adapted for use on a Ford automobile. A Ford automobile has a hand lever projecting upwardly from the usual wheel brake controller shaft and also what Ford terms a speed lever or what I believe might be more aptly termed "a clutch cam" for lifting up the clutch lever to disengage the clutch when drawing back the hand lever into neutral or when applying the emergency brake. I provide a sleeve for the controller shaft and I mount on the one end thereof the usual hand lever which as explained on the Ford T-Model is mounted on the controller shaft and on the opposite end thereof the speed lever which as already explained in a Ford T-Model is also mounted on the controller shaft and I also rigidly secure to the controller shaft an arm having a rod projecting laterally therefrom adapted to abut the rear edge of the speed lever to cause the controller shaft to rearwardly rotate when said sleeve and speed lever is rearwardly rotated by pulling the hand lever back thus causing the emergency brake to be put on as usual as the clutch is disengaged on rearward rotation of said sleeve. As stated I also connect the transmission brake foot pedal with the controller shaft so as to cause rearward rotation of the controller shaft to apply the emergency brake on depression of the foot pedal which one-way connection also permits the controller shaft to be rearwardly rotated to apply the emergency brake independently of the application of the foot pedal actuated driving mechanism brake.

These and such other objects of my invention as may hereinafter appear will be best understood from a description of the accompanying drawings which illustrates embodiments of my invention adapted for use on a Ford automobile.

In the drawings, Fig. 1 is a diagrammatic perspective view of the controller shaft and adjacent parts of the Ford automobile having my invention attached, with the sleeve rearwardly rotated to apply the emergency brake and disconnect the clutch independently of the transmission brake.

Fig. 2 is a view similar to Fig. 1 showing the emergency brake entirely off and the clutch lever

in high, showing the clutch and transmission brake in detail.

Fig. 3 is a view similar to Fig. 1 showing the emergency brake lever way off, the clutch lever in high, but with the foot pedal depressed so as to apply both the transmission brake and also through the medium of the one-way connection to revolve the controller shaft to apply the wheel brake.

Fig. 4 is a perspective view of the controller shaft sleeve showing the hand lever and speed lever integrally attached thereto.

Fig. 5 is a plan view partially shown in section of the one-way operative sliding bearing.

Fig. 6 is a rear elevation of the arm adapted to be rigidly secured to the controller shaft and having a rod projecting laterally therefrom.

Fig. 7 is a plan view of the rear half of the chassis of the automobile.

Fig. 8 is a perspective view similar to Fig. 1 of my invention showing a modified type of one-way connection between the controller shaft and foot pedal, the hand lever being retracted so as to disconnect the clutch, but not far enough to apply any brakes.

Fig. 9 is a perspective view similar to Fig. 8 of the modified form shown therein with the foot pedal depressed so as to apply both the transmission and wheel brakes.

Fig. 10 is a perspective view similar to Fig. 1 of my invention showing a further modified type of a sliding bearing connection between the controller shaft and foot pedal, the hand lever being retracted so as to disconnect the clutch, but not far enough to apply any brakes.

Fig. 11 is a perspective view similar to Fig. 10 of the modified form shown therein with the hand lever retracted to disconnect the clutch and to apply the wheel brakes.

Fig. 12 is a perspective view similar to Fig. 10 of the modified form shown therein with the foot pedal depressed so as to apply both transmission and wheel brakes independently of the clutch.

Fig. 13 is a perspective view of the connecting link.

Fig. 14 is a perspective view of the arm attachment for the controller shaft.

Fig. 15 is a perspective view of a modified form of my invention similar to the embodiment shown in Figs. 10–12 with the exception that the foot lever actuates an additional set of rear wheel brakes instead of the transmission brake.

Fig. 16 is a perspective view of a modified form of my invention similar to the embodiment shown in Figs. 1–3 except that the sleeve is actuated by a foot lever and the forward shaft by a hand lever to apply an additional set of rear wheel brakes in place of the transmission brakes shown, both the controller shaft and the front shaft being rotated in the application of the brakes in opposite directions to the manner of rotation of said shafts to the embodiments shown in Figs. 1–3.

In the drawings, wherein like characters of reference indicate like parts throughout, 10 generally indicates the frame of the automobile, 12 the rear axle thereof and 14 the usual rear wheels thereof which are propelled as usual by means of the driving mechanism 16. The driving mechanism 16 contains the usual clutch 18 slidable on the revolving transmission shaft 19, and operated by means of the clutch yoke 21, secured to the oscillatable clutch shaft 44, and transmission brake 28 operated through the shaft 26, the transmission brake and clutch being contained as usual in the transmission cover 23. As explained, I have shown in the drawings the usual construction of a Ford T-Model modified to include my invention. The usual controller shaft 24 is suitably mounted on the side beams 26 of the frame 10. The rods 28 for actuating the rear wheel brakes are suitably attached to the ends thereof. I have shown in the drawings levers of the first class 30 rigidly secured to each end of said controller shafts 24, on each end of which are pivoted the rods 28 for actuating the rear wheel brakes and the rods 32 for actuating the front wheel brakes where employed, said construction being that of my copending application for Controlling means for four wheel brakes, Serial #39,296, filed June 24, 1925, though it is obvious that my invention may be connected to apply brakes to the rear wheels alone as does the usual Ford construction. As explained, one braking means is usually actuated by this controller shaft, in Fords and in most automobiles being the brake on the rear wheels or so-called emergency brake.

34 represents the usual brake foot pedal which is rigidly mounted on the shaft 36 to actuate the brake 28 on the driving mechanism, in Fords and commonly a brake on the transmission. 38 represents the usual clutch pedal which in Fords when released is in high speed and when fully depressed is in low speed. The clutch pedal 38 is connected through the medium of the slow speed connection 40 to one end of the clutch lever 42 pivoted as usual to the clutch shaft 44. The clutch lever 42 has at its upper end the clutch lever screw 46 which in the usual construction is adapted to abut what Ford terms "the speed lever" 48, or what might be more aptly termed the clutch cam which is on the end of the speed lever arm 50 mounted on the controller shaft 24. In the usual Ford construction the hand lever 52 for rotating the controller shaft 24 is mounted on said shaft 24 exterior of the frame 10 and is provided with the rack 54 and usual releasing handle 56 so that said lever 52 and integral controller shaft 24 may be locked in any desired position.

So much of the construction heretofore described is common on all Ford T-Models but the simple attachment I provide modifies this usual construction to accomplish the results portrayed above. I provide a sleeve 58 for the left hand side of said controller shaft adapted to extend from the left hand end thereof to a point normally adjacent to that of the speed lever 50 and on the sleeve 60, I mount the usual hand lever 52 on the outer end thereof and on the inner end thereof I mount the usual speed lever 50. As shown in Fig. 4 in my preferred embodiment, the hand lever 52 and speed lever 50 are preferably constructed integral with the sleeve. It is obvious therefore that when the sleeve 58 is rearwardly rotated through the medium of the hand lever 52 that due to the sharpness 58 of the crank cam 48 at first the clutch will be immediately disengaged and on further rotation of said sleeve 58, the speed lever 50 will tend to move into a further backward position to apply the wheel brakes. To provide means whereby the controller shaft may also be rearwardly rotated on the rearward revolution of said sleeve 58, I provide the additional attachment about to be described shown in detail in Fig. 6. This comprises an arm 62 having a collar 64 at one end thereof for rigid securement to the controller shaft 24 and a rod 66 projecting sidewise therefrom. As

shown in my preferred embodiment said rod 66 preferably has a roller sleeve 68 mounted thereon. Said arm 62 is rigidly secured to the controller shaft 24 adjacent to the inner end of the sleeve 60. It is obvious that as the sleeve 60 is rearwardly rotated, the rear edge of the speed lever 58 will abut the laterally projecting rod 66 thereby through the medium of the arm 62 causing the controller shaft 24 to rearwardly rotate to apply the wheel brakes 29 through the medium of the rods 28 and 32.

To permit the foot brake pedal 34 on depression thereof to apply the wheel brakes 29 in addition to the transmission brake 20 I provide the connection about to be described, which operates on the setting of the transmission brake to rearwardly rotate the controller shaft 24 to apply the wheel brake, said connection being inoperable to apply the driving mechanism brake on independent rotation of the controller shaft 24 caused by drawing the hand lever 57 backwards, consequent rearward rotation of the sleeve 60, backward movement of the integral speed lever 58 and rearward rotation of the shaft 24 by contact of the speed lever 58 with the rods 66 of the arm 62. While any type of one-way operative means may be provided for this purpose, I preferably employ the sliding bearing 70. I provide the foot pedal 34 with the downward extension 72 and I pivot thereon the sleeve 74. I pivot on the upper end of the arm 62 the rod 76, which rod 76 is adapted to reciprocate in said sleeve 74 and is provided with the adjustable stops 78 thereon which may comprise the nuts 76 threaded on the forward end of said rod 76. It is obvious that on depression of the foot pedal 34 the sleeve 78 is thereby pushed rearward until the rear end 80 thereof abuts the stop 78 on the rod 76 thereby causing the arm 62 to move backwards and rearwardly rotate the controller shaft 24, thus applying the wheel brakes 29 in addition to the transmission brake 20. As the controller shaft 24 is rearwardly rotated through the medium of the hand lever 57 as explained, it is obvious that the rod 76 will merely slide backwards within the sleeve 74 without in any way affecting the operation of the foot pedal 34 or transmission brake 20.

In Figs. 9 and 10, I have shown a modified form of means operable on the setting of the driving mechanism brake to rearwardly rotate the controller shaft 24 to apply the wheel brakes 29. In this embodiment I provide the arm 62 with the downward extension 82 and I attach on the lower end thereof the cable 84 the other end of which is suitably attached to the lower end of the downward extension 72 of the foot pedal 34. To secure the desired reversal of motion I pass said cable 84 around the pulley 86 suitably pivoted on the bracket 88 attached to the transmission cover 22. It is obvious that as in the preferred form depression of the foot pedal 34 will cause simultaneous operation of the transmission brake 20 and the rearward rotation of the controller shaft 24 to apply the wheel brakes 29 as explained and that the controller shaft 24 will rearwardly rotate independently of the foot pedal and transmission brake 20, the cable 84 merely slackening as the controller shaft is rotated without affecting the foot pedal 34 or transmission brake 20.

In Figs. 10–14, I have shown my preferred form of a sliding bearing connection between the foot pedal and the controller shaft operable on the setting of the driving mechanism brake to rearwardly rotate the controller shaft 24 to apply the wheel brakes 29. In this embodiment I also provide the arm 62 with the downward extension 92, said downward extension 92 preferably extending arcuately downwardly and forwardly from said shaft 24. The foot pedal 34 is provided with the downward extension 72 preferably extending arcuately downwardly and rearwardly thereof. One end 96 of the link 92 is pivotally joined to the downward extension 72 of the foot pedal 34 in any suitable fashion and the opposite lower end of said link 92 preferably terminates in the ears 94. Said ears 94 are preferably provided with the vertically extending slots 96. The pin 98 is secured transversely of the front end of the downward extension 92 of the arm 62. The ends 99 of said pin are of such a length that they are free to slide in the vertical slots 96 of the ears 94. It is obvious that as the controller shaft is rearwardly rotated, the pin 98 will merely slide upwardly in the slots 96 thereby permitting the controller shaft to be rotated without affecting the transmission brake 20. When, however, the foot pedal 34 is depressed, the lower ends of the slot 96 will abut the ends of the pin 98 thereby raising up the extension 92 to cause the rotation of the controller shaft to apply the wheel brakes. It is obvious that as in the other forms depression of the foot pedal 34 will cause simultaneous operation of the transmission brake 20 and the rearward rotation of the controller shaft 24 to apply the wheel brakes 29 as explained and that the controller shaft 24 may rearwardly rotate independently of the foot pedal and transmission brake 20, the ends 99 of the pin 98 merely sliding upwardly in the vertical slots 96 as the controller shaft is rotated without affecting the foot pedal 34 or transmission brake 20.

Though I have shown my invention as specifically applied to a Ford and adapted to actuate the specific braking means found therein it is obvious that my invention will function if any type of braking means such as an additional wheel brake such as is shown in Figs. 15 and 16 is substituted for the transmission brake or that the controller shaft 24, by either forward or rearward rotation thereof may actuate the transmission brake or any type of braking means shown without departing from the spirit and scope of my invention. It is also obvious that my invention may in so far as it concerns the cooperation between two different types of braking means, may cooperate without any clutch connection, that any type of one-way operative means for connecting the foot pedal and controller shaft may be employed, that the transmission brake or other brakes used may be actuated by a hand lever or a foot lever, and that the sleeve 60 may be revolved by a foot lever such as is shown in Fig. 16 or a hand lever in either direction without in any way departing from the spirit and scope of my invention. In Fig. 15, I have shown an embodiment of my invention which functions identically to the embodiment shown in Figs. 10–14 and hitherto described with the exception that the shaft 38 actuated by the foot lever 34 which in the embodiment hitherto shown actuates a transmission brake 20 is extended laterally and provided at its ends with the additional arms 100, each of which operates an additional brake on each rear wheel 14 through the medium of the rods 104 connected respectively to said arms 100 and supplemental rear wheel brakes 102. In Fig. 16, I have shown an embodiment of my invention substantially identical to the construction of the embodiment of my invention shown in Figs. 1–3 with the exception that the lever 57 which rotates the sleeve 60 consists of a foot lever rather than a hand

lever and that the lever 34 which revolves the shaft 36 consists of a hand lever rather than a foot lever. In order for the shafts 36 and 76 to rotate respectively in a manner desired to apply the brakes with said type of actuating levers it is obvious that the rotation thereof will be reversed and that the clutch levers 60 will have to overlie the rod 66 instead of underlie it as in the embodiments hitherto described and that the lost motion connection will be attached directly to the lever arm 34 instead of to an extension 72 thereof and that the position of the sleeve 74 and pistons 76 of the lost motion connection 70 will be reversed, namely, by attaching the piston 76 thereof to the shaft 34 and the sleeve 74 thereof to the extension 82 of the arm 62. My invention specifically comprises both the attachments, the sleeve 60 and the arm 62 heretofore described and broadly as heretofore explained comprises the combination in an automobile of one braking means, a clutch for connecting the power to the driving wheels, a braking means independent of said first braking means, means for operating said first braking means and disengaging the clutch simultaneously independently of said other braking means for sudden stops and means for operating both braking means simultaneously independently of the clutch.

It is understood that my invention is not limited to the specific embodiments shown and that various deviations may be made therefrom without departing from the spirit and scope of the appended claims.

What I claim as new and desire to secure as Letters Patent is:

1. In a motor vehicle, the combination of a wheel brake, a clutch for connecting the power to the driving wheels, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, means actuated on rotation of said sleeve to disengage the clutch, means operable from the driver's seat to rotate said sleeve, means to rotate said shaft on rotation of said sleeve, means operable from the driver's seat to actuate the driving mechanism brake and means operable on setting of the driving mechanism brake to rotate said shaft to apply the wheel brake, said means being inoperable to apply the driving mechanism brake on independent rotation of the shaft.

2. In a vehicle, the combination of a wheel brake, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, means operable from the driver's seat to rotate said sleeve, means to rotate said shaft on rotation of said sleeve, means operable from the driver's seat to actuate the driving mechanism brake and means operable on setting of the driving mechanism brake to rotate said shaft to apply the wheel brake, said means being inoperable to apply the driving mechanism brake on independent rotation of said shaft.

3. In a motor vehicle, the combination of a wheel brake, a clutch for connecting the power to the driving wheels, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, means actuated on rotation of said sleeve to disengage the clutch, means operable from the driver's seat to rotate said sleeve, means to rotate said shaft on rotation of said sleeve, means operable from the driver's seat to actuate the driving mechanism brake and means operable on setting of the driving mechanism brake to rotate said shaft to apply the wheel brake.

4. In a vehicle, the combination of a wheel brake, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, means operable from the driver's seat to rotate said sleeve, means to rotate said shaft on rotation of said sleeve, means operable from the driver's seat to actuate the driving mechanism brake and means operable on setting of the driving mechanism brake to rotate said shaft to apply the wheel brake.

5. In a motor vehicle, the combination of braking means, a clutch for connecting the power to the driving wheels, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, means actuated on rotation of said sleeve to disengage the clutch, means operable from the driver's seat to rotate said sleeve, means to rotate said shaft on rotation of said sleeve, means operable from the driver's seat to actuate said second braking means and means operable on the setting of said second braking means to rotate said shaft to apply said first braking means, said means being inoperable to apply said second braking means on independent rotation of said shaft.

6. In a motor vehicle, the combination of a braking means, a clutch for connecting the power to the driving wheels, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, means actuated on rotation of said sleeve to disengage the clutch, means operable from the driver's seat to rotate said sleeve, means to rotate said shaft on rotation of said sleeve, means operable from the driver's seat to actuate said second braking means and means operable on the setting of said second braking means to rotate said shaft to apply said first braking means.

7. In a vehicle, the combination of a braking means, a second braking means independent of said first braking means, a rotatable controlled shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, means operable from the driver's seat to rotate said sleeve, means to rotate said shaft on rotation of said sleeve, means operable from the driver's seat to actuate said second braking means and means operable on the setting of said second braking means to rotate said shaft to apply said first braking means.

8. In a motor vehicle, the combination of a wheel brake, a chuch for connecting the power to the driving wheels, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, means operable from the driver's seat to rearwardly rotate said sleeve, a speed lever for disengaging the clutch mounted on said sleeve, an arm rigidly secured to said shaft having a rod projecting laterally therefrom adapted to abut said speed lever to cause said shaft to rotate on rearward rotation on said sleeve, means to actuate the driving mechanism brake and means operable on the setting of the driving mechanism brake to rotate said shaft to apply the wheel brake, said means being inoperable to apply the driving mechanism brake on independent rotation of said shaft.

9. In a motor vehicle, the combination of a wheel brake, a clutch for connecting the power

to the driving wheels, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, means operable from the driver's seat to rearwardly rotate said sleeve, a speed lever for disengaging the clutch mounted on said sleeve, an arm rigidly secured to said shaft having a rod projecting laterally therefrom adapted to abut said speed lever to cause said shaft to rotate on rearward rotation of said sleeve, means to actuate the driving mechanism brake and means operable on the setting of the driving mechanism brake to rearwardly rotate said shaft to apply the wheel brake.

10. In a motor vehicle, the combination of a braking means, a clutch for connecting the power to the driving wheels, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, means operable from the driver's seat to rotate said sleeve, a speed lever for disengaging the clutch mounted on said sleeve, an arm rigidly secured to said shaft having a rod projecting laterally therefrom to abut said speed lever to cause said shaft to rotate on rotation of said sleeve, means to actuate said second braking means and means operable on the setting of said second braking means to rotate said shaft to apply said first braking means, said means being inoperable to apply said second braking means on independent rotation of said shaft.

11. In a motor vehicle, the combination of a braking means, a clutch for connecting the power to the driving wheels, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, means operable from the driver's seat to rearwardly rotate said sleeve, a speed lever for disengaging the clutch mounted on said sleeve, an arm rigidly secured to said shaft having a rod projecting laterally therefrom to abut said speed lever to cause said shaft to rotate on rearward rotation of said sleeve, means to actuate said second braking means and means operable on setting of said second braking means to rearwardly rotate said shaft to apply said first braking means.

12. In a motor vehicle, the combination of a wheel brake, a clutch for connecting the power to the driving wheels, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, a speed lever for disengaging the clutch mounted on said sleeve, an arm rigidly secured to said shaft having a rod projecting laterally therefrom adapted to abut said speed lever to cause said shaft to rotate on rearward rotation of said sleeve, a foot lever to actuate the driving mechanism brake and means including a sliding bearing connecting said foot lever and controller shaft to rearwardly rotate said shaft to apply the wheel brake on depression of said foot lever, said means being inoperable to apply the driving mechanism brake on independent rotation of said shaft.

13. In a vehicle, the combination of a wheel brake, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, means to rotate said shaft on rotation of said sleeve, a foot lever to actuate the driving mechanism brake and means including a sliding bearing connecting said foot lever and controller shaft to rotate said shaft to apply the driving mechanism brake on depression of said foot lever, said means being inoperable to apply the driving mechanism brake on independent rotation of said shaft.

14. In a motor vehicle, the combination of a wheel brake, a clutch for connecting the power to the driving wheels, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, a speed lever for disengaging the clutch mounted on said sleeve, an arm rigidly secured to said shaft having a rod projecting laterally therefrom adapted to abut said speed lever to cause said shaft to rotate on rotation of said sleeve, a foot lever to actuate the driving mechanism brake and means including a sliding bearing connecting said foot lever and controller shaft to apply the wheel brake on depression of said foot lever.

15. In a vehicle, the combination of a wheel brake, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, means to rotate said shaft on rotation of said sleeve, a foot lever to actuate the driving mechanism brake and means including a sliding bearing connecting said foot lever and controller shaft to rotate said shaft to apply the wheel brake on depression of said foot lever.

16. In a motor vehicle, the combination of a braking means, a clutch for connecting the power to the driving wheels, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, a speed lever for disengaging the clutch mounted on said sleeve, an arm rigidly secured to said shaft having a rod projecting laterally therefrom adapted to abut said speed lever to cause said shaft to rotate on rearward rotation of said sleeve, a foot lever to actuate said second braking means and means including a sliding bearing connecting said foot lever and controller shaft to rearwardly rotate said shaft to apply said first braking means on depression of said foot lever, said means being inoperable to apply said second braking means on independent rotation of said shaft.

17. In a vehicle, the combination of a braking means, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, means to rotate said shaft on rotation of said sleeve, a foot lever to actuate said second braking means and means including a sliding bearing connecting said foot lever and controller shaft to rotate said shaft to apply said first braking means on depression of said foot lever, said means being inoperable to apply the second braking means on independent rotation of said shaft.

18. In a vehicle, the combination of a braking means, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, means to rotate said shaft on rotation of said sleeve, a foot lever to actuate said second braking means and means including a sliding bearing connecting

said foot lever and controller shaft to rotate said shaft to apply said first braking means on depression of said foot lever.

18. In a motor vehicle, the combination of a wheel brake, a clutch for connecting the power to the driving wheels, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, a speed lever for disengaging the clutch mounted on said sleeve, an arm rigidly secured to said shaft having a rod projecting laterally therefrom adapted to abut said speed lever to cause said shaft to rotate on rearward rotation of said sleeve and an extension projecting arcuately downwardly and forwardly therefrom, a foot lever to actuate the driving mechanism brake, and a link having one end thereof pivotally joined to a downward extension of said lever and the other end thereof pivotally joined to said arm extension.

20. In a vehicle, the combination of a wheel brake, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, means to rotate said shaft on rotation of said sleeve, a foot lever to actuate the driving mechanism brake, an arm mounted on said shaft having a portion extending arcuately downwardly and forwardly from said shaft and a link having one end thereof pivotally joined to a downward extension of said foot lever and the other end pivotally joined to said arm extension.

21. In a motor vehicle, the combination of a braking means, a clutch for connecting the power to the driving wheels, a second braking means, a rotatable controller shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, a speed lever for disengaging the clutch mounted on said sleeve and an arm rigidly secured to said shaft having a rod projecting laterally therefrom adapted to abut said speed lever to cause said shaft to rotate on rotation of said sleeve and an extension projecting arcuately downward and forwardly from said shaft, a foot lever to actuate said second braking means, and a link having one end thereof pivotally joined to a downward extension of said foot lever and the other end thereof pivotally joined to said arm extension.

23. In a vehicle, the combination of a braking means, a second braking means, a rotatable controller shaft for actuating said second braking means, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, means to rotate said shaft on rotation of said sleeve, an arm secured to said shaft projecting arcuately downwardly and forwardly from said shaft, a foot lever to actuate said first braking means, and a link having one end thereof pivotally joined to a downward extension of said foot lever and the other end thereof pivotally joined to said arm extension.

23. In a motor vehicle, the combination of a wheel brake, a clutch for connecting the power to the driving wheels, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, a speed lever for disengaging the clutch mounted on said sleeve, an arm rigidly secured to said shaft having a rod projecting laterally therefrom adapted to abut said speed lever to cause said shaft to rotate on rearward rotation of said sleeve and an extension projecting arcuately downwardly and forwardly from said shaft, a foot lever to actuate the driving mechanism brake, a link having one end thereof pivotally joined to a downward extension of said foot lever and on its opposite end two ears projecting downwardly therefrom having vertical slots therein and a pin mounted transversely on the front end of said arm extension, the ends thereof being movable in said slots in said ears.

24. In a vehicle, the combination of a wheel brake, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, means to rotate said shaft on rotation of said sleeve, an arm rigidly secured to said shaft extending arcuately downwardly and forwardly from said shaft, a foot lever to actuate the driving mechanism brake, a link having one end thereof pivotally joined to a downward extension of the lever and having at its opposite end two ears projecting downwardly therefrom having vertical slots therein and a pin mounted transversely on the front end of said arm, the ends thereof being slidable in said slots in said ears.

25. In a motor vehicle, the combination of a braking means, a clutch for connecting the power to the driving wheels, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, a speed lever for disengaging the clutch mounted on said sleeve, an arm rigidly secured to said shaft having a rod projecting laterally therefrom adapted to abut said speed lever to cause said shaft to rotate on rotation of said sleeve and an extension projecting arcuately downwardly and forwardly from said shaft, a foot lever to actuate said second braking means, a link having one end thereof pivotally joined to a downward extension of said foot lever and at the other end two ears projecting downwardly therefrom having vertical slots therein and a pin mounted transversely of the front end of said arm extension, the ends thereof being slidable in said slots in said ears.

26. In a vehicle, the combination of a braking means, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a sleeve loosely mounted on said shaft, a hand lever projecting upwards from said sleeve, means to rotate said shaft on rotation of said sleeve, an arm rigidly secured to said shaft extending arcuately downwardly and forwardly from said shaft, a link having one end thereof pivotally joined to a downward extension of said foot lever and having at the opposite end thereof two ears projecting downwardly therefrom having vertical slots therein and a pin transversely mounted in the front end of said arm slidable in said slots in said ears.

27. An attachment for automobile brake controller shafts comprising an arm having a collar for attachment to the controller shaft and a rod projecting laterally therefrom parallel to said collar.

28. An attachment for automobile brake controller shafts comprising a collar for attachment to the controller shaft, an arm projecting vertically upwardly therefrom having a rod projecting laterally therefrom and an arm extending

arcuately downwardly and forwardly from said collar when attached to said controller shaft shaped to rotate said shaft on an upward pull on the end thereof.

29. In a brake control device, a controller shaft, braking means actuated on rotation of said controller shaft, a hand lever pivotally mounted on the vehicle, a foot pedal pivotally mounted on the vehicle, means connecting said hand lever to said controller shaft to cause rotation thereof to apply the braking means, and means connecting said foot pedal to said controller shaft to cause rotation thereof to actuate said braking means, including a link pivotally connected to said foot pedal having a head threadedly adjustable thereon having a slot in the end thereof near the controller shaft and an arm projecting from said controller shaft having a pin therein adapted to register in said slot.

30. In a vehicle, the combination of a wheel brake, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a rotatably mounted sleeve, means operable from the driver's seat to rotate said sleeve, means to rotate said controller shaft on rotation of said sleeve, means operable from the driver's seat to actuate the driving mechanism brake and means operable on setting of the driving mechanism brake to rotate said controller shaft to apply the wheel brake, said means being inoperable to apply the driving mechanism brake on independent rotation of said shaft.

31. In a vehicle, the combination of a wheel brake, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a rotatably mounted sleeve, means operable from the driver's seat to rotate said sleeve, means to rotate said controller shaft on rotation of said sleeve, means operable from the driver's seat to actuate the driving mechanism brake and means operable on setting of the driving mechanism brake to rotate said controller shaft to apply the wheel brake.

32. In a vehicle, the combination of a braking means, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a rotatably mounted sleeve, means operable from the driver's seat to rotate said sleeve, means to rotate said controller shaft on rotation of said sleeve, means operable from the driver's seat to actuate said second braking means and means operable on the setting of said second braking means to simultaneously rotate said controller shaft to apply said first braking means.

33. In a vehicle, the combination of a wheel brake, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a rotatably mounted sleeve, a hand lever projecting upwards from said sleeve, means to rotate said controller shaft on rotation of said sleeve, a foot lever to actuate the driving mechanism brake and means including a sliding bearing connecting said foot lever and controller shaft to rotate said controller shaft to apply the wheel brake on depression of said foot lever, said means being inoperable to apply the driving mechanism brake on independent rotation of said shaft.

34. In a vehicle, the combination of a wheel brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a rotatably mounted sleeve, a hand lever projecting upwards from said sleeve, means to rotate said shaft on rotation of said sleeve, a foot lever to actuate the driving mechanism brake and means including a sliding bearing connecting said foot lever and controller shaft to rotate said controller shaft to apply the wheel brake on depression of said foot lever.

35. In a vehicle, the combination of a braking means, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a rotatably mounted sleeve, a hand lever projecting upwards from said sleeve, means to rotate said controller shaft on rotation of said sleeve, a foot lever to actuate said second braking means, and means including a sliding bearing connecting said foot lever and controller shaft to rotate said controller shaft to apply said first braking means on depression of said foot lever, said means being inoperable to apply the second braking means on independent rotation of said controller shaft.

36. In a vehicle, the combination of a braking means, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a rotatably mounted sleeve, a hand lever projecting upwards from said sleeve, means to rotate said controller shaft on rotation of said sleeve, a foot lever to actuate said second braking means and means including a sliding bearing connecting said foot lever and controller shaft to simultaneously rotate said controller shaft to apply said first braking means on depression of said foot lever.

37. In a vehicle, the combination of a wheel brake, a brake upon the driving mechanism, a rotatable controller shaft for actuating the wheel brake, a rotatably mounted sleeve, a hand lever projecting upwards from said sleeve, means to rotate said controller shaft on rotation of said sleeve, a foot lever to actuate the driving mechanism brake, an arm mounted on said controller shaft having a portion extending arcuately downwardly and forwardly from said controller shaft and a link having one end thereof pivotally joined to a downward extension of said foot lever and the other end pivotally joined to said arm extension.

38. In a vehicle, the combination of a braking means, a second braking means, a rotatable controller shaft for actuating said second braking means, a rotatably mounted sleeve, a hand lever projecting upwards from said sleeve, means to rotate said controller shaft on rotation of said sleeve, an arm secured to said controller shaft projecting arcuately downwardly and forwardly from said controller shaft, a foot lever to actuate said first braking means, and a link having one end thereof pivotally joined to a downward extension of said foot lever and the other end thereof pivotally joined to said arm extension.

39. In a vehicle, a rear wheel braking means, a second braking means independent of said rear wheel braking means, a rotatable controller shaft for actuating said rear wheel braking means, a rotatably mounted sleeve, means operable from the driver's seat to rotate said sleeve, means to rotate said controller shaft on rotation of said sleeve, means operable from the driver's seat to actuate said second braking means, and means operable on the setting of said second braking means to rotate said controller shaft to apply said rear wheel braking means.

40. In a vehicle, a rear wheel braking means, a second braking means independent of said rear wheel braking means, a rigid rotatable controller shaft for actuating said rear wheel braking means,

a rotatably mounted sleeve, a hand lever projecting upwards from said sleeve, means to rotate said controller shaft on rotation of said sleeve, a foot lever to actuate said second braking means and means connecting said foot lever and controller shaft to rotate said controller shaft to apply the rear wheel braking means on depression of said foot lever.

41. In a vehicle, the combination of a braking means, a second braking means independent of said first braking means, a rotatable controller shaft for actuating said first braking means, a rotatably mounted sleeve, means operable from the driver's seat to rotate said sleeve, means to rotate said controller shaft on rotation of said sleeve, means operable from the driver's seat to actuate said second braking means and means operable on the setting of said second braking means to rotate said controller shaft to apply said first braking means, said means being inoperable to apply the second braking means on independent rotation of said controller shaft.

JOHN B. DES ROSIERS.

quite dry. On the dry day some tests were also made on a Tarmac type road, when it was found that quicker stops could be made up to 25 m.p.h., but beyond this speed the car could be stopped in a shorter distance on ordinary macadam. With the same chassis and on the same road, tests were made with the rear wheel brakes only with the results in Table II. The Darracq used for these tests has steel-lined aluminum drums of 16 in. diameter, with Ferodo lined shoes of 2 in. face width.

The figures were obtained by running the car at the required speed and dropping a sandbag overboard at the moment the signal was given to the driver to stop. The distance was measured from the point when the sandbag hit the ground (care being taken to see that the bag did not slide on the road) to the centre of the chassis. At high speeds it was rather difficult to obtain coordination between the dropping of the bag and the applying of the brakes, and several tests were made when this was in any doubt. It is obvious that these figures could be improved on, if desired, but their value lies in the fact that they are quite normal and represent the distances in which any driver could pull up with a car of this weight and this brake equipment.

It is interesting to examine these practical tests from a theoretical standpoint, calculating the distance in which the car can be stopped by the formula.

Distance required to stop:

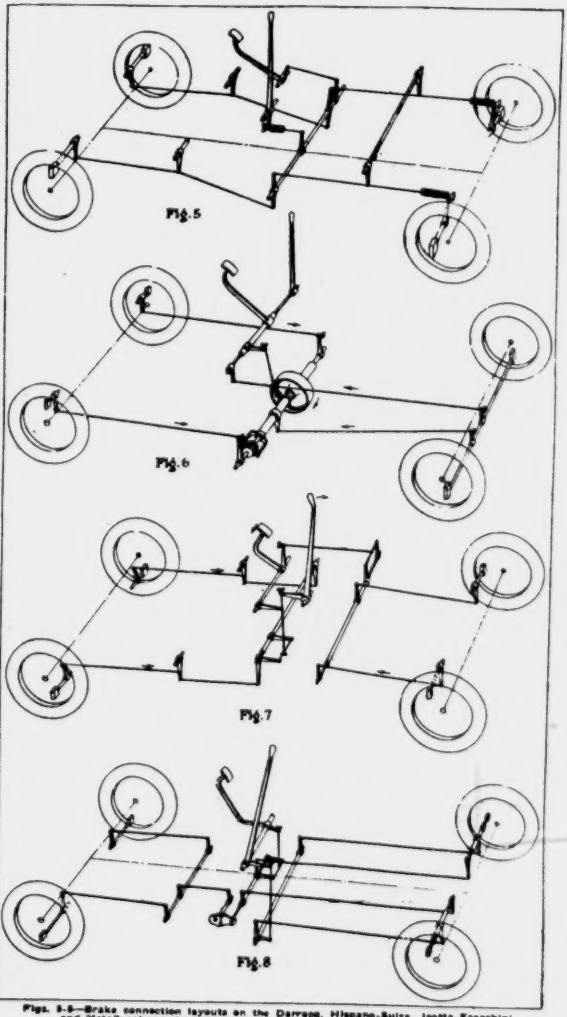
$$L = 0.00393 \frac{P V^2}{F}$$

and taking as the coefficient of adherence of the wheels to the road 0.60. The comparative results are shown in Table 8.

Theoretical and Practical Relation

It will be observed that in the case of brakes on all four wheels there is very little difference between the theoretical figures and those obtained by the practical test. In the case of rear wheel brakes only the difference is greater, theory showing a much shorter stopping distance than is obtained in practice. This is due to the fact that when brakes are applied on the rear wheels, a portion of the weight on the rear axle is transferred to the front axle, and this reduction of weight on the rear is not taken into consideration in the calculations as usually made.

Claims have been made for considerably better performance than the above, and the following figures have been published as actual performance results for a hydraulic four-wheel braking system:



Figs. 5-8—Brake connection layouts on the Darracq, Hispano-Suiza, Isotta-Fraschini and Metallurgique. In each case there is one pedal and one brake lever.

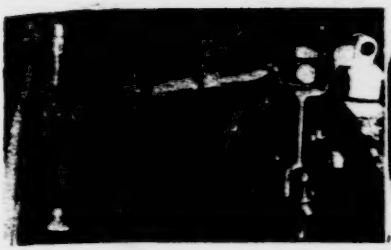


Fig. 13—Detail of Darracq brake operating mechanism on front wheel.

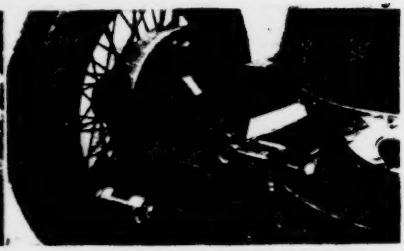


Fig. 14—Bellanger brakes and double springs.

...roke a front and a rear wheel on opposite sides would still get the same braking effort. This is one of the patented features of Perrot's system, and was used by him on the first Argyll cars to have four wheel brakes. Curiously, however, those firms producing under Perrot license do not adopt this particular feature.

Delage, who has had more practical experience than any other firm on front wheel brakes, builds under Perrot license and brakes by pedal through two bevel type differentials (Fig. 4). There is a brake on the transmission, operated by hand, but its only practical use is to lock the car in a standing position. On the new 10-hp. type now going into production Delage has abandoned the transmission brake. As under French law there must be two independent sets of brakes, it is assumed that the rear wheel brakes will be operated by lever as well as by pedal. Some such arrangement is necessary in order to lock the car in a standing position.

Darracq has simultaneous operation of the four brakes by pedal or by lever (Fig. 5), but unlike the Delage there is no equalizing mechanism. After long road tests of the two types it is difficult to determine which has the advantage in this particular respect. On the Darracq it is necessary to adjust the two front and the two rear wheels together, but once adjusted there appears to be no tendency for them to wear unevenly. On the Delage, on the other hand, any differences between the two wheels forming a pair will be taken care of by the differential. Obviously the Darracq is a cheaper production job.

Hispano-Suiza is the only one making use of a relay brake, as shown in Fig. 6. This device has been adopted in order to reduce the effort required to apply the brakes, and is successful to such an extent that the pressure required on the brake pedal is hardly any more than that for the accelerator. On the Hispano-Suiza all four brakes are applied by pedal, but the rear wheel brakes can be applied separately by lever.

Isotta-Fraschini brakes by means of pedal on all four wheels, or by means of the central lever, shown in Fig. 7. Metallurgique is rather special with the use of rear wheel drums having twice the width of those at the front and containing double brakes, one set being connected up to the front and operated by pedal, and the second set being controlled by hand. There is no brake on the transmission. The layout is shown in Fig. 8.

There is a certain historic interest in noting that one of the first front wheel brakes was used on the Dufour truck in 1904 (Fig. 9). This brake was very defective, for the axis of the steering pivot being a considerable distance from the point of contact of the wheel with the ground, there was a reaction on the connecting rod when the brakes were applied, and when one wheel was on dry ground and the other on a wet patch, there was considerable reaction on the steering gear.

When front wheel brakes came up again in 1910, on the Allen-Liversedge, the Argyll, and the Scat cars, the extended axis of the steering pivots cut the axis of the wheels at their point of contact with the ground, as shown in Fig. 10, which represents the Scat brakes of that period, so that the steering was not affected by unequal braking efforts on the front wheels.

All modern four-wheel brakes are on this principle, while the brakes themselves may be divided into two distinct classes—those built on the Perrot system with the cam and operating mechanism mounted above the axle, as shown in Fig. 11, on the Delage and as also used by Darracq and Hispano-Suiza, and those on the Isotta-Fraschini system with the cam below the axle. This latter design is adopted by Excelsior, Metallurgique (Fig. 12), Bellanger, and Piccard-Pictet.

With the Perrot system an extremely flexible connection is required from frame member to the brake drum. The brake camshaft is telescopic and is carried at its outer extremity on the frame member. Alternative methods of

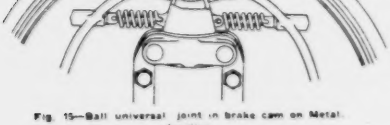


Fig. 15—Ball universal joint in brake cam on Metallurgique.

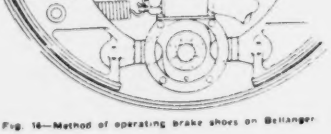


Fig. 16—Method of operating brake shoes on Bellanger.

(9)

No. 875

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CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

JOHN B. DESROSIERS,

Petitioner,

vs.

FORD MOTOR COMPANY,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I. JOSEPH FARLEY,
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Eclipse Composition Company, 243 W. Larned St., Detroit

INDEX

Subject Index

	Page
Respondent's Brief in Opposition to Petition for Writ of Certiorari	1-8
Foreword	1-2
Argument	2-8
Petitioner's Point I	2-3
Petitioner's Point II	4-5
Petitioner's Point III	5
Petitioner's Point IV	6-7
Petitioner's Point V	7-8
Conclusion	8

Table of Cases Cited

Abernathy v. State of Oklahoma, 31 F. 2d 547 3

Dean v. Davis, 212 F. 88 2

E. H. Ferree Co. v. United Shoe Machinery Co., 290 U.S. 614 and 708 3

Lewis Hall Iron Works v. Blair, 23 F. 2d 972 3

Magnum Import Co. v. Coty, 262, U.S. 159 3

Mills Novelty Co. v. Monarch Tool & Mfg Co., 49 F. 2d 28 3

Park Lane Dresses v. Houghton & Dutton Co., 54 F. 2d 33 3

Smart v. Wright, 227 F. 84 2

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FOREWORD

As merely a brief analysis of the "Questions Involved" and the "Reasons Relied on for Allowance of the Writ" as set forth in the petition filed herein is required to demonstrate their insufficiency to support the issuance of the writ, we shall confine the following discussion mainly to pointing out the respects in which they signally fail to set forth reasons of the character exampled in Rule 38, Par. 5(b) of this Court as justifying the exercise of this Court's discretion to issue the writ.

Although petitioner's "Summary and Short Statement" (Pet. p. 1 to 4) contains many inaccuracies and omissions, we refrain, for the sake of brevity, from commenting upon them or from burdening the Court with a substitute statement, but merely direct attention to the non-compliance with Supreme Court Rule 27, Par. 2(d), evidenced by the total absence of any reference to the record in petitioner's Statement to support any of its seemingly factual recitations.

ARGUMENT

PETITIONER'S POINT I.*

Question 1 (p. 5) clearly imports a negative answer by showing that petitioner misconceives the law in deeming the decision of the First Circuit Court of Appeals in the instant case "a departure from the accepted and usual course of judicial proceedings" (Sup. Ct. Rule 38, Par. 5(b)) because it *sustained the decision* of the District Court "on *grounds* entirely distinct from those relied on" by the District Court. That an appellate court may base its affirmance on entirely different grounds than those adopted by the lower court is established by a long line of decisions.

> *Dean v. Davis*, 212 F. 88, appeal granted 221 Fed. 1020, Certiorari denied 235 U. S. 702, and decree affirmed 242 U. S. 438;
> *Smart v. Wright*, 227 F. 84;

*For the sake of brevity we shall discuss each Question and Reason under the headings Point I, Point II, etc., with a few brief allusions to the Argument relating thereto under the respective correspondingly numbered Points as set forth in petitioner's supporting brief.

Lewis Hall Iron Works v. Blair, 23 F. 2d. 972, Certiorari denied 277 U. S. 592;

Abernathy v. State of Oklahoma, 31 F. 2d. 547, Certiorari denied 280 U. S. 599;

Park Lane Dresses v. Houghton & Dutton Co., 54 F. 2d. 33;

Mills Novelty Co. v. Monarch Tool & Mfg. Co., 49 F. 2d. 28; Certiorari denied 284 U. S. 662.

Petitioner's misconception of the law is on a par with his misconstruction of the decisions below. The appellate court did not base its holding of invalidity on grounds "entirely distinct from those relied on by the District Court," but both courts held the patent in suit invalid on identically the same grounds, viz, for lack of invention. (See District Court Finding of Fact 12, R. 17, and Conclusion of Law 1, R. 18, and the Court of Appeals decision R. 193). The assertions in the petition (p. 6) and supporting brief (p. 16, 17) that the Circuit Court of Appeals overruled the District Court are not only contradictory to petitioner's previous statements that it generally affirmed (p. 3) and sustained the District Court (p. 5) but are completely at variance with the Court of Appeals unequivocal holding that

> "*The judgment of the District Court is affirmed*" (R. 193).

Examination of the cases *Magnum Import Co. v. Coty* (262 U. S. 159), and *E. H. Ferree Co. v. United Shoe Machinery Co.* (290 U. S. 614 and 708), upon which petitioner mainly relies as justifying the writ, reveals that although certiorari was granted in the Ferree case (262 U. S. at p. 614), the writ was "dismissed per stipulation of counsel" (262 U. S. at p. 708); and, that the decision in the Magnum case instead of justifying the issuance of the writ here dictates its denial.

PETITIONER'S POINT II.

Petitioner bottoms his Point II on alleged errors "clearly apparent on the face of the opinion" of the Circuit Court of Appeals (Question 2, p. 5, Reason 2, p. 7 and Argument pp. 17-22). Although Question 2 alleges "*errors of law* clearly apparent on the face of the opinion," Reason 2 advanced in support thereof shows that petitioner has seized mainly upon the use of the word "says" in the penultimate line of the court's opinion (R. 193) as the error of law complained of. Question 2 also poses the query whether the Court will grant certiorari to correct "a clearly erroneous legal interpretation in the opinion of a skeletonized schematic sketch appearing in a publication." Or in other words, the reading of a drawing. What the drawing shows is a matter of fact and is not made any the less so by calling its reading by the Court below a "legal interpretation."

We know of no case in which this Court has granted certiorari to review such an obvious fact finding as the reading of a drawing in a reference publication. Surely this is not such a question of vital public importance as to warrant review of the matter by the Supreme Court of the United States. Petitioner advances no cogent reason in this respect for review in his Reason 2, but reveals in his argument his real motive for seeking certiorari to be because:

> "The explanation of the Appellate Court as to the construction and operation is diametrically opposed to that of the petitioner" (Br., p. 24).

Petitioner attempts to support his Point II by a six-page discussion (pp. 17-22) devoted not to what appears

"on the face of the opinion," nor even to what appears on the face of the reference publication,—Automotive Industries—but to two sets of doctored drawings, not introduced in evidence and for which there is neither record support nor justification. The length and nature of this argument (which like petitioner's statement of the case is barren of record references to support its seemingly factual statements) completely decries, if not belies the so-called "errors of law clearly apparent on the face of the opinion" or the so-called "clearly erroneous legal interpretation" of the drawing or sketch of the reference publication.

PETITIONER'S POINT III.

Reason 3 (pp. 8-9) states "the decision of the Circuit Court of Appeals involves a Federal question" but omits to state, nor is any assertion made, that it is a question of great, or far-reaching or any public importance.

It then proceeds, under subdivisions (a) to (e) inclusive, to set forth certain well-defined general principles of patent law and cites cases in support thereof which it says were "*ignored*" by the Circuit Court of Appeals. As the Court neither discussed any of these principles, nor cited, nor discussed, nor ruled *contra* the cases cited by petitioner, it is, to say the least, a violent assumption that the Court "ignored" them.

Question 4 (p. 6), which appears to be a mere appendage to question 3, seems to pose a surgical rather than a legal point and to enunciate petitioner's foreboding of the denial of his petition, coupled with a suggestion of all sufficient reasons for its denial.

PETITIONER'S POINT IV.

Under Question 5 (p. 6) and Reason 4 (p. 9) petitioner seeks to make it appear that the Court of Appeals decision in this case is in conflict with the Court of Customs and Patent Appeals decision in the case of *In re Dodge* (74 F. 2nd. 756), by claiming "there is a conflict between the *reasoning* in the decisions of the two courts." A truly novel grounds for certiorari!

There is no conflict of the type that justifies certiorari such as existed in *Sanitary Refrigerator Co. v. Winters* (280 U. S. 30) nor as contemplated by Supreme Court Rule 38, Par. 5(b) on which petitioner relies. *In re Dodge* did not pass on the validity of the DesRosiers patent in suit Re. 20086, for that decision was rendered January 28, 1935, prior to the issuance of said patent on September 1, 1936. Therefore the validity of this patent was not, and could not have been, before the Court of Customs and Patent Appeals in the *Dodge* case. Neither is there conflict even in the "reasoning" of the courts. In the *Dodge* case even though the Court of Customs and Patent Appeals recognized, as did the First Circuit Court of Appeals, the lack of a showing of a certain lost motion connection between the foot brake pedal and the controller shaft in the Automotive Industries publication, its reasoning and decision were in complete harmony, and not in conflict, with the reasoning and decision of the First Circuit Court of Appeals in the instant case. The former tribunal very definitely held that an attempted distinction over the reference, set forth in the claims it considered, and which were sought to be obtained in the Dodge application for patent, "would be obvious to one skilled in the

art to solve the problem in accordance with applicant's arrangement" and "immaterial from the standpoint of invention" (74 F. 2d. 758), while the latter held "* * * it would clearly be a simple routine matter not calling for the skill of an inventor to modify the Darracq (Automotive Industries) structure by adding any one of the old and well known one-way connections between the foot brake pedal and controller shaft if thought desirable" (R. 193).

PETITIONER'S POINT V.

Under Question 6 (p. 6) and Reason 5 (p. 10), petitioner urges "Certiorari should be granted, since further conflict of decisions is now impossible, the patent in suit having expired * * *" (p. 10). No pretense is made that any question of public interest is involved. The fact that the patent in suit has expired demonstrates there can be no question of, either great, or, any public interest.

The facts are that a simple private controversy, in no wise of any public interest, has been waged between the parties and petitioner was defeated. No unsettled question of law is involved. Both courts below agreed in holding invention was lacking,—a plain issue of fact, the appellate court, however, in affirming the lower court, giving an additional or cumulative reason for its affirmance.

The only opinions that are in conflict here are the opinion of petitioner's counsel and the concurring opinions of both courts below that the patent in suit was invalid as lacking invention. Obviously, petitioner falls in that class of which this Court, in *Magnum Import Co. v. Coty, supra*, upon which petitioner so heavily relies, stated:

> "Our experience shows that 80 per cent of those who petition for certiorari do not appreciate these necessary limitations upon our issue of the writ" (p. 163).

This Court's holding in the Magnum case:

> "The jurisdiction was not conferred upon this Court merely to give the defeated party in the Circuit Court of Appeals another hearing."

dictates a denial of the petition here which has nothing to sanction it but that petitioner, the defeated party in the Court of Appeals, would like to be given another hearing.

CONCLUSION

We submit that the petition is wholly without merit and should be denied.

Respectfully submitted,

I. JOSEPH FARLEY,
Counsel for Respondent.